



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

1 आषाढ़ 1945 (श0)

(सं० पटना 489) पटना, बृहस्पतिवार, 22 जून 2023

सं०सं० 04तक०/DTD/उ०वि०/प्र०स०को०/AKIC/01/2013 पार्ट-II—1811
उद्योग विभाग

संकल्प

20 जून 2023

विषय:—अमृतसर—कोलकाता औद्योगिक कोरीडोर (AKIC) परियोजना के तहत इण्टीग्रेटेड मैनुफैक्चरिंग क्लस्टर (IMC), गया की स्थापना हेतु स्पेशल पर्पस व्हीकल (SPV) में शेयर होल्डर्स एग्रीमेंट (SHA) एवं स्टेट सपोर्ट एग्रीमेंट (SSA) के अनुमोदन के संबंध में।

1. अमृतसर—कोलकाता इंडस्ट्रीयल कोरीडोर (AKIC) परियोजना के तहत इण्टीग्रेटेड मैनुफैक्चरिंग क्लस्टर (IMC), गया की स्थापना के लिए मंत्रीपरिषद् द्वारा दिनांक 02.03.2021 को दी गयी स्वीकृति में संशोधन करते हुए संशोधित शेयर होल्डर्स एग्रीमेंट (SHA) (Annexure-I) एवं स्टेट सपोर्ट एग्रीमेंट (SSA) (Annexure-II) पर मंत्रीपरिषद् की स्वीकृति दी जाती है।

2. शेयर होल्डर्स एग्रीमेंट (SHA) एवं स्टेट सपोर्ट एग्रीमेंट (SSA) में मामूली संशोधन की आवश्यकता होने पर इसके लिए उद्योग विभाग की सहमति से बियाड़ा के निदेशक मण्डल को प्राधिकृत किया जाता है।

3. प्रस्ताव पर मंत्रीपरिषद् द्वारा दिनांक—30.05.2023 को मद संख्या—14 के रूप में स्वीकृति दी गयी है।

बिहार—राज्यपाल के आदेश से,
संदीप पौण्डरीक,
अपर मुख्य सचिव।

(एनेक्सर-I)

**SHAREHOLDERS AGREEMENT
BY AND BETWEEN
NATIONAL INDUSTRIAL CORRIDOR DEVELOPMENT AND
IMPLEMENTATION TRUST
AND
BIHAR INDUSTRIAL AREA DEVELOPMENT AUTHORITY**

SHAREHOLDERS AGREEMENT

This Shareholders Agreement is executed as on this [•] day of [•] 2021, by and between:

National Industrial Corridor Development and Implementation Trust, a trust having its registered office at Room no. 341B, Third Floor, Hotel Ashok, Chanakyapuri, New Delhi - 110021, acting on behalf of Government of India, through _____, its Chief Executive Officer and Trustee, (hereinafter referred to as “**NICDIT**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the **FIRST PART**; and

Bihar Industrial Area Development Authority, an authority established under the provisions of the Section 3 of the Bihar Industrial Area Development Act, 1974 having its office at 1st floor, Udyog Bhawan, East Gandhi Maidan Patna, Bihar-800004, India through its Managing Director (hereinafter referred to as “**BIADA**” which expression shall, unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the **SECOND PART**

NICDIT, BIADA are hereinafter, unless the context otherwise requires, collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS

- A. NICDIT is a trust established by Government of India, entrusted with the function to establish an enabling institutional, financing and operational framework for the integrated development of industrial corridors in India.
- B. BIADA is designated as state level nodal agency and is established under Section 3(1) of the Bihar Industrial Area Development Authority Act, 1974 (“**BIADA Act**”), to coordinate and facilitate the activities of AKIC Project (as defined herein below) with the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, GoI and NICDC (as defined herein below), and carries on the functions and exercises the powers specified in the said BIADA Act.
- C. The GoB (as defined herein below) has identified the area of [•] acres at Gamhariya, Block-Dobhi, District-Gaya, Bihar, to be developed as an Integrated Manufacturing Cluster (as defined below) and has notified/ will be notifying the same as an industrial township under Article 243Q of the Constitution of India.
- D. NICDIT and the GoB/BIADA have decided to take up the development of the Integrated Manufacturing Cluster at Gamhariya, Block-Dobhi, District- Gaya, Bihar through the SPV (as defined herein below). BIADA, as the state level nodal agency, will facilitate in the development and implementation of the projects and will render assistance to the SPV in this regard, as and when required.
- E. The Parties are desirous of recording in writing their specific mutual understanding and agreement as to the rights and obligations of BIADA and NICDIT as the shareholders of the SPV and with regard to capitalization, organization, management and operation of the SPV to develop the Integrated Manufacturing Cluster, in accordance with the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AND THIS AGREEMENT WITNESSETH AS UNDER:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, in addition to the terms defined in the description of Parties, unless repugnant to the context or meaning thereof: (a) all capitalised words and expressions defined by inclusion in quotation and/ or parenthesis anywhere in this Agreement, have the same meanings as ascribed to such words and expressions; and (b) following words and expressions shall, have the meanings as set-out below:

“**Acceptance Date**” shall have the meaning ascribed to such term in Clause 9.4 of this Agreement;

“**Act**” means the Companies Act, 2013, and such provisions of the Companies Act, 1956 which may be applicable, or any statutory modification or re-enactment thereof, in force from time to time, including any rules framed thereunder;

“**Affected Party**” shall have the meaning ascribed to such term in Clause 16 of this Agreement;

“**Affiliate(s)**” means, when used with respect to a Party, (i) a Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with the Party specified, or (ii) is a subsidiary of the same Person of which the Party is a subsidiary. For purposes of this definition, “**Control**” (including with correlative meaning, the terms “Controlling”, “Controlled” with respect to a Person) shall mean the right to, directly or indirectly, control the affairs of any third party either by: (i) holding more than 50% (fifty per cent) of the total voting rights in such third party concerned; or (ii) right to appoint a majority of directors on the board of such party concerned; or (iii) controlling the management or policy decision exercisable by such party acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or otherwise;

“**affirmative vote items**” shall mean the items requiring an affirmative vote as listed in Schedule G;

“**Agreement**” means this shareholders agreement and all annexures, schedules and appendices hereto, as amended and modified from time to time, in accordance with the terms hereof;

“**AKIC Project**” means the Amritsar-Kolkata Industrial Corridor project approved by the Union Cabinet on 20th January, 2014, and on 8th December, 2016 for development of industrial nodes/township, integrated manufacturing clusters and related infrastructure at Eastern Dedicated Freight Corridor traversing seven states viz. Punjab, Haryana, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand and West Bengal, to rapidly enhance India's competitiveness in manufacturing.

“**Appendix**” shall have the meaning ascribed to such term in Clause 4.3.1 of this Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by GoI or GoB including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Integrated Manufacturing Cluster Project, Trunk

Infrastructure and Strategic Projects during the subsistence of this Agreement;

“**Articles**” or “**Articles of Association**” mean the articles of association of the SPV;

“**BIADA Act**” has the meaning ascribed to such term in Recital B of this Agreement;

“**Board**” or “**Board of Directors**” shall mean the board of directors of SPV;

“**Business**” means the businesses that the SPV will undertake pursuant to the provisions of the Memorandum of Association;

“**Business Day**” means a day on which banks are generally open for normal business in the States of Delhi and Bihar;

“**CEO and Managing Director**” means the chief executive officer and managing director of the SPV to be appointed in accordance with the provisions of Clause 7.1.8 of this Agreement and Applicable Laws;

“**Chairman**” means the Chairman of the Board of SPV as may be appointed for the time being;

“**Closing**” means the completion of the subscription and allotment of Shares in accordance with the provisions of this Agreement, and completion of the other actions set out in Clause 14.1 hereof;

“**Competing Projects**” means any business or development, construction and/or operation of industrial parks/clusters/townships/projects, commercial, industrial or residential complexes, or other projects, which could directly or indirectly compete with the public private partnership (PPP) projects at the Industrial Township, the Strategic Projects and the Facilities Development;

“**Confidential Information**” shall have the meaning ascribed to such term in Clause 15 of this Agreement;

“**Construction Works**” means all works and things necessary to complete the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the SPV has entered into or may enter into, any contract for the development of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects, including contract for construction or operation and/or maintenance of any of the components of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the SPV;

“**Deadlock**” shall have the meaning ascribed in Clause 8.8 of this Agreement;

“**Deadlock Matter**” shall have the meaning ascribed in Clause 8.7 of this Agreement;

“**Development Plan**” shall have the meaning ascribed to such term in Clause 5.4.1 of this Agreement;

“**Director**” means a director of the SPV;

“**Effective Date**” shall have the meaning ascribed thereto in Clause 12 of this Agreement;

“**Encumbrances**” mean, in relation to the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, where applicable herein but excluding utilities referred to in Clause 4.6.1 of this Agreement;

“**Facilities Development**” shall have the meaning set forth in Clause 3.2.5 of this Agreement;

“**Fair Price**” shall have the meaning ascribed thereto in Clause 13.3.3 of this Agreement;

“**Fee**” means any charge or fee by whatever name called, to be determined by the SPV and payable by a User:

- (a) as user charge for using the Integrated Manufacturing Cluster, Trunk Infrastructure or Strategic Projects or a part thereof, or any other services or facilities in the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects; or
- (b) towards compensating expenses incurred or to be incurred by the SPV towards the provision of Trunk Infrastructure; or
- (c) as consideration for availing Facilities Development; or
- (d) any other charge or fee as may be determined by the SPV;

“**Fee Contract**” means the contract, if any, entered into by the SPV with a Contractor for collection of Fee for and on behalf of the SPV and matters incidental thereto;

“**Fee Contractor**” means the Person, if any, with whom the SPV has entered into a Fee Contract;

“**Financial Year**” shall have the meaning ascribed thereto in Clause 11.5 of this Agreement;

“**Force Majeure Event**” means (i) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India; (ii) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case involving or directly affecting India; (iii) nuclear explosion, radioactive or chemical contamination; (iv) strikes, working to rule, go-slows and/or lockouts which are in each case nationwide or state wide in the State of Bihar; (v) any act of God, such as, effect of the natural elements, including lightning, fire, earthquake, tidal wave, flood, storm, cyclone, typhoon or tornado; (vi) epidemic or plague; (vii) change in Applicable Law; (viii) the act or omission or delay of any Governmental Authority, not caused due to reasons attributable to the Party claiming Force Majeure Event, which prevents or causes a delay in the implementation of the Integrated Manufacturing Cluster Project; (ix) expropriation, creeping expropriation, requisition, confiscation, nationalization, export or import restrictions;

Provided that each of the aforementioned event is beyond the reasonable control of the Party claiming Force Majeure Event, which could not have been prevented by exercise of reasonable care on the part of such Party (including its Affiliates or any of their respective employees, servants or agents) and which could not have been reasonably foreseen, and directly affects the Integrated Manufacturing Cluster Project or the ability of a Party to perform its obligations under this Agreement;

“**General Meetings**” has the meaning ascribed to such term in Clause 8.1 of this Agreement;

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the SPV in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government of India” or **“GoI”** means the Union Government of India;

“Government of Bihar” or **“GoB”** means the State Government of Bihar;

“Governmental Authority” means any government authority, regulatory authority, statutory authority, government department, agency, commission, board, tribunal or court, a rule or regulation making entity having or purporting to have jurisdiction in India or any state or other subdivision thereof or any municipality, district or other subdivision thereof;

“Grant” has the meaning ascribed to such term in Clause 3.2.3 of this Agreement;

“Integrated Manufacturing Cluster” means the integrated manufacturing cluster to be developed in accordance with the provisions of the State Support Agreement and this Agreement, at the Site, i.e. Gamhariya, Block- Dobhi, Gaya Bihar as an industrial cluster within the AKIC Project, and notified or to be notified as such by the Governor of the State of Bihar under the Proviso to Article 243Q of the Constitution of India, with due autonomy and functional freedom to the SPV to develop, implement, dispose land, govern the Site and manage the Urban Services, and shall comprise the manufacturing and service industry along with supporting amenities that will essentially include residential clusters, educational clusters, research, commercial recreation offices and administration uses and other support infrastructure to be built and operated and maintained on the Site and includes all other project assets necessary for and associated with operating and maintaining the project;

“Integrated Manufacturing Cluster Project” means the development of the Integrated Manufacturing Cluster to be undertaken by the SPV in accordance with the State Support Agreement and this Agreement;

“Lease Agreement” means the lease agreement to be executed between BIADA and the SPV, substantially in form set forth in **Schedule-F** to this Agreement;

“Lock-in Period” has the meaning ascribed to such term in Clause 9.1 of this Agreement;

“Maintenance Programme” has the meaning ascribed to such term in Clause 5.7.2 of this Agreement;

“Master Plan” shall have the meaning ascribed thereto in Clause 5.3;

“Memorandum of Association” means the memorandum of association of the SPV;

“NICDC” means the National Industrial Corridor Development Corporation Limited, having its registered office at 8th Floor, Tower-1, LIC Jeevan Bharti Building, 124 Connaught Place, New Delhi-110001, set up by GoI pursuant to Union Cabinet approval, whose functions include but are not limited to, acting as the project development partner and knowledge partner to industrial townships and integrated manufacturing clusters constituting the KBIC Project or their developers, promoters including the SPV, project specific companies or special purpose vehicles or other persons, that may be involved in the actual implementation of Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects;

“NIMZ” means the National Investment and Manufacturing Zones as specified in the National Manufacturing Policy notified on November 4, 2011 by the Ministry of Commerce and Industry, GoI;

“Offeree” has the meaning ascribed to such term in Clause 9.2 of this Agreement;

“Offeror” has the meaning ascribed to such term in Clause 9.2 of this Agreement;

“Person” shall include an individual, an association, a corporation, a partnership, a joint venture, a trust, an unincorporated organisation, a joint stock company or other entity or organisation, including a government or political subdivision, department or an agency or instrumentality thereof and/or any other legal entity;

“**Planning Authority**” shall have the meaning ascribed thereto in Clause 3.4.2 of this Agreement;

“**Principal Business**” shall have the meaning ascribed thereto in Clause 3.2.1 of this Agreement;

“**Project Agreements**” means this Agreement, the agreements for financing the development of the Integrated Manufacturing Cluster Project, engineering, procurement and construction (EPC) contracts, operations and management (O&M) contracts, Fee Contracts, all agreements relating to Facilities Development and any other agreements or material contracts including consultancy contracts that may be entered into by the SPV with any person in connection with matters relating to, arising out of or incidental to the Integrated Manufacturing Cluster Project;

“**Project Land**” means the project land constituting the Site specified in **Schedule A** to this Agreement;

“**Project Facilities**” means the facilities as described in **Schedule-C** to this Agreement;

“**Right of Way**” means the de-facto possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects and Facilities Development in accordance with this Agreement;

“**Rs.**” or “**Indian Rupees**” means the lawful currency of India;

“**Scope of Projects**” has the meaning ascribed to such term in Clause 2.2.1 of this Agreement;

“**Shares**” means the equity shares, each of face value of Rs.10 (Rupees Ten), in the share capital of SPV;

“**Shareholder**” or “**Shareholders**” means any Person who holds Shares of the SPV, in accordance with the terms of this Agreement and Applicable Laws;

“**Site**” shall have the meaning set forth in Clause 4.1;

“**SPV**” means the [public/private] company limited by shares, to be incorporated in terms of Clause 3.1.1 of this Agreement, under the provisions of the Act;

“**State Support Agreement**” means the agreement executed on or around the date hereof, between the Parties hereto and GoB, for the provision of state support in respect of certain aspects related to development of the Integrated Manufacturing Cluster as envisaged under this Agreement;

“**Strategic Projects**” mean the diverse infrastructure and other projects for provision of services primarily, but not exclusively, for the Integrated Manufacturing Cluster or other industrial townships and integrated manufacturing clusters forming part of the AKIC Project, intended to be developed or promoted by NICDC, whether through the SPV or otherwise, to achieve early development of and induce growth within the industrial townships or integrated manufacturing cluster forming part of the AKIC Project. These Strategic Projects may not necessarily be located within any of the any of the integrated manufacturing cluster and industrial townships forming part of the AKIC Project and may include, but not be limited to, projects related to power generation, transmission and distribution, water treatment and supply, waste management, sewage treatment, transportation, logistics parks, exhibition cum convention centres and other Trunk Infrastructure and shall, where the context so requires when used in this Agreement, refer to such of the Strategic Projects as may be determined by NICDIT as being projects to be implemented by or together with the SPV;

“**Transfer Notice**” has the meaning ascribed to such term in Clause 9.3 of this Agreement;

“**Trunk Infrastructure**” means the diverse infrastructure and other projects for provision of services primarily, but not exclusively, for the Integrated Manufacturing Cluster, that is not capable of commercialisation or is not amenable to development under the public private partnership (PPP) model and therefore, is intended to be developed or promoted by the SPV. The Trunk Infrastructure may not necessarily be located within the Integrated Manufacturing Cluster;

“**Urban Services**” mean all urban services and functions to be provided or discharged by the SPV including construction and maintenance of roads, transportation, water supply and sanitation, public health engineering, power supply, street lighting, city gas supply, environmental management, building sanctions and development control, any other services by whatever name called, akin to municipal services, within or in relation to the Integrated Manufacturing Cluster; and

“**User**” means a Person or entity who is a resident of or a user of the Integrated Manufacturing Cluster, Trunk Infrastructure and/or Strategic Projects or any other facility therein, and shall, for the avoidance of doubt, include any Person to whom land sites may be allotted, sold, leased and/or licensed by the SPV, for its use in accordance with the Master Plan, or for undertaking any Construction Works or development of a Trunk Infrastructure or a Strategic Project.

1.2 **Interpretation**

In this Agreement, unless the context otherwise requires:

- 1.2.1 words importing singular shall include plural and vice versa;
- 1.2.2 paragraphs and heading (including for Schedules and Annexures) are for reference only and shall not affect the construction or interpretation of this Agreement;
- 1.2.3 references to Recitals, Clauses, Sub-clauses, Schedules, Annexures or Appendices shall be deemed to be references to recitals, clauses, sub-clauses, schedules, annexures and appendices, of and to this Agreement;
- 1.2.4 reference to any agreement, including this Agreement, deed, document, instrument, rule, regulation, notification, statute or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s);
- 1.2.5 time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the following Business Day if the last day of such period is not a Business Day;
- 1.2.6 any reference to time shall, except where the context otherwise requires, be construed as a reference to the time in India. Any reference a day shall be construed as mean reference to a calendar day. Any reference to month, shall mean a reference to a calendar month as per the Gregorian calendar;
- 1.2.7 reference to any Applicable Law includes a reference to such Applicable Law as amended re-enacted or supplemented from time to time and any rule or regulation made there under;
- 1.2.8 the rule of construction, if any, that a contract should be interpreted against the Party(ies) responsible for the drafting and preparation thereof, shall not apply;
- 1.2.9 the terms “herein”, “hereof”, “hereto”, “hereunder” and words of similar purport refer to this Agreement as a whole;

- 1.2.10 the use of the word “including” followed by specific example(s) in this Agreement, shall not be construed as limiting the meaning of the general wording preceding it; and
- 1.2.11 “writing” shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form (other than writing on an electronic or visual display screen) or other writing in non-transitory form.

2. THE INDUSTRIAL TOWNSHIP, TRUNK INFRASTRUCTURE AND STRATEGIC PROJECTS AND ITS SCOPE

2.1 The Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects

- 2.1.1 The Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall mean and include the construction, development, operation and maintenance of the Integrated Manufacturing Cluster, including for the avoidance of doubt, Facilities Development, Trunk Infrastructure and Strategic Projects in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of Projects.

For the avoidance of doubt, the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall also mean and include procurement of the Project Land and disposal of any development on the Integrated Manufacturing Cluster and/or the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects or any part thereof, and collection of fee as contemplated in this Agreement.

- 2.1.2 BIADA and NICDIT agree that the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall be implemented by them through the SPV, in accordance with the provisions of this Agreement.

2.2 Scope of development of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects

- 2.2.1 The scope of development of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects (“**Scope of Projects**”) to be executed by the SPV shall mean and include:
- land procurement, planning, development, operations and maintenance, and disposal of land and built-up areas and Facilities Development on the Site set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of Project Facilities as specified in **Schedule-C**, and in conformity with the specifications and standards set forth in **Schedule-D**;
 - operation, maintenance, collection of Fee, governance and management of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and performance of the Urban Services in accordance with the provisions of this Agreement;
 - undertake the development and construction of the Facilities Development and disposal of any development on the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and/or the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, or any part thereof, as contemplated in this Agreement;
 - undertake such other functions and activities as may be necessary and/or incidental to the above; and
 - performance and fulfilment by the SPV of all other obligations set out herein, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the SPV’s obligations under this Agreement.

3. SPV AND GRANT

3.1.1 SPV

The Parties shall ensure that, no later than 180 (one hundred and eighty) days from the execution hereof, the SPV is incorporated as a [public/private] limited company under the provisions of the Act, under the name and style of [*insert name of SPV*] or such other name as may be mutually agreed between the Parties and approved by the concerned Registrar of Companies. The registered office of the SPV shall be located at [*insert city*], in the state of Bihar or at such other location as may be mutually agreed between the Parties. Upon incorporation, the Parties shall ensure that the SPV executes a deed of adherence to become a party to this Agreement and be bound by all the provisions contained in this Agreement.

3.1.2 The Parties agree that the Articles of Association and Memorandum of Association shall be approved by NICDIT and BIADA, as far as possible and as permissible by Applicable Law, incorporate the provisions of this Agreement and, to the extent that they are inconsistent, the Parties shall exercise their rights as Shareholders of the SPV to ensure that the Articles of Association and/or Memorandum of Association are amended to the extent possible under the laws of India to remove any such inconsistencies. The Parties further agree that, till such time the Articles of Association and/or Memorandum of Association are amended, as aforesaid, in the event of any conflict between the terms of this Agreement and the Articles of Association and/or Memorandum of Association, the terms and conditions of this Agreement shall prevail and take precedence as amongst the Parties hereto.

3.1.3 The SPV shall perform the functions and discharge the obligations set out herein, and the Parties shall ensure that all steps as may be necessary to authorise and oblige the SPV shall be taken, including but not limited to execution of necessary agreements with the SPV.

3.1.4 The SPV shall bear all the cost of its incorporation and all related and incidental costs.

3.1.5 The SPV shall be incorporated by 7 (seven) subscribers, out of which 3 (three) shall be nominated by NICDIT and the remaining 4 (four), by BIADA. NICDIT shall subscribe to Shares constituting 50% (fifty per cent) of the share capital of the SPV, and BIADA shall subscribe to Shares constituting the remaining 50% (fifty per cent) of the share capital.

3.1.6 Subject to the provisions of the Act and the Articles, each fully paid Share shall carry 1 (one) vote.

3.1.7 The SPV shall at all times be managed and operated as an independent enterprise, and managed in professional, efficient, commercial and business-like manner at all times for the benefit of the Shareholders. Except as expressly authorized in this Agreement, the SPV shall not at any time engage in dealings or transactions with any Party or its Affiliates on terms more favourable than would be accorded to an independent, non-affiliated person or company. It is hereby expressly agreed between the Parties that all related party dealings or transactions will not be permitted unless unanimously approved by the Parties in accordance with the terms and conditions of this Agreement.

3.2 Principal Business of the SPV

3.2.1 The principal business of the SPV shall be to implement the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects in accordance with the Scope of Projects and in accordance with the provisions of this Agreement ("**Principal Business**"). Accordingly, the Principal Business shall include land procurement, development (planning, design, financing, contracting, construction and supervision etc.), land and built up area disposal, preparation of the

- Master Plan, undertaking by itself or through other Persons, the Construction Works, operation and maintenance of the Integrated Manufacturing Cluster, Trunk Infrastructure and the Strategic Projects, including for the avoidance of doubt, provision of Urban Services, collection of Fee, and such other matters incidental thereto or necessary for the performance of any or all of the SPV's obligations under this Agreement. , governance and management of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects.
- 3.2.2 NICDIT and BIADA shall undertake and ensure that the Principal Business, other than Strategic Projects, is carried by them only through the SPV (including through other Persons/agencies duly appointed or authorized by the SPV) and therefore, each of NICDIT and BIADA confirm, acknowledge and undertake that they shall not undertake or engage in any Competing Projects for a period of [20] ([twenty]) years within a radius of 10 kilometres, either by themselves or through any other entity and/or together with any Person other than the SPV. Provided however that, the aforesaid restriction shall not apply to the projects, as specified in **Schedule-E** hereof, being the ongoing projects of brownfield area of industrial township of NIMZ, the existing and ongoing industrial clusters / parks / projects of BIADA and GoB and for which land allotments have already been made to any specific industry.
- 3.2.3 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, BIADA and NICDIT hereby grant to the SPV the exclusive rights set forth herein including the exclusive right, license and authority during the subsistence of this Agreement to execute the Principal Business ("the Grant") and the SPV hereby accepts the Grant and agrees to implement the Integrated Manufacturing Cluster Project subject to and in accordance with the terms and conditions set forth herein.
- 3.2.4 Subject to and in accordance with the provisions of this Agreement, the Grant hereby granted shall oblige or entitle (as the case may be) the SPV to:
- (a) leasehold right], right title and interest, Right of Way and access to the Site for the purpose of the Grant conferred hereunder and where by the SPV determines, acquiring additional land;
 - (b) plan, finance, develop, construct and commercially exploit, the Integrated Manufacturing Cluster, including the Facilities Development, Trunk Infrastructure Projects and the Strategic Projects, regulate and enforce the Master Plan, Development Plan, zonal plans and other detailed planning and development control guidelines, building byelaws etc., and dispose of any development on the Integrated Manufacturing Cluster and/or the Facilities Development, or any part thereof, as contemplated in this Agreement and to appropriate the Fee received for such disposal;
 - (c) manage, operate and maintain the Integrated Manufacturing Cluster Projects, Trunk Infrastructure Projects and Strategic Projects including provision of Urban Services, and regulate the use thereof by third parties;
 - (d) determine, demand, collect and appropriate Fee from persons liable for payment of Fee for using the Integrated Manufacturing Cluster Projects, Trunk Infrastructure Projects and Strategic Projects and availing of the Urban Services or any part thereof and take appropriate measures if the Fee due in respect of any Urban Service is not paid by any User;
 - (e) perform and fulfil all of the SPV's obligations under and in accordance with this Agreement;
 - (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the SPV under this Agreement;

- (g) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Grant hereby granted, or on the whole or any part of the Integrated Manufacturing Cluster, nor transfer, lease, license or part possession thereof, save and except as expressly required for financing of the Integrated Manufacturing Cluster Project and as otherwise permitted by this Agreement;
 - (h) enter into Project Agreements for purposes of carrying out its functions hereunder;
 - (i) enter into joint ventures, set up subsidiaries, establish special purpose vehicles, grant concessions, enter into lease or leave and license arrangements in respect of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure Projects and Strategic Projects or part thereof, make equity and other financial investments and create such other corporate and administrative structures as may be required towards effective development of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure Projects and Strategic Projects, subject to prior written approval of Department of Industries, Government of Bihar.
 - (j) undertake, in respect of Integrated Manufacturing Cluster, such of the functions assigned to the SPV envisaged in the National Manufacturing Policy, 2011 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, GoI, in respect of NIMZ.
 - (k) undertake any other functions as may be mutually agreed between the Parties, subject to applicable laws and regulations.
- 3.2.5 Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Grant hereby granted shall, without prejudice to the provisions of Clause 3.2.4, entitle the SPV to undertake development, construction, operation and maintenance of Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects on the Site specified in **Schedule-A**, and to exploit such development for commercial purposes (the “**Facilities Development**”) which shall, without limiting the generality of the above, include the right to lease, sub-lease or license any or all parts thereof, demand and collect Fee and undertake such other activities incidental thereto or necessary for the same, in the manner the SPV deems fit. For the avoidance of doubt, Facilities Development shall include development and construction of residential, commercial and industrial assets, including support infrastructure for the same.
- 3.1 Obligations of the SPV in Relation to the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects
- 3.3.1 Subject to and on the terms and conditions of this Agreement, the SPV shall:
- (a) at its own cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Integrated Manufacturing Cluster and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder;
 - (b) comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement;
 - (c) subject to the provisions of Sub-Clauses (a) and (b) above, discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person;
 - (d) undertake development, operation and maintenance of the Integrated Manufacturing Cluster and make commercial use thereof in accordance with the provisions of Clause 3.5;

- (e) undertake development, operation and maintenance of the Facilities Development and make commercial use thereof in accordance with the provisions of Clause 3.6;
- (f) at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (i) sign and make, or cause to be made, necessary applications to the relevant Governmental Authorities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (ii) ensure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems required for the Integrated Manufacturing Cluster;
 - (iii) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (iv) ensure that its Contractors shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the SPV's obligations under this Agreement;
 - (v) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
 - (vi) ensure that all facilities and amenities within the Integrated Manufacturing Cluster are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
 - (vii) ensure that all sub contracts and other Project Agreements are consistent with this Agreement and do not confer any rights on the Contractors inconsistent with this Agreement; and
 - (viii) maintain a high standard in the appearance and aesthetic quality of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and achieve integration of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The SPV shall engage professional architects and town planners of repute for ensuring that the design of the Integrated Manufacturing Cluster meets the aforesaid aesthetic standards.

3.3.2 Sole purpose of the SPV

The SPV shall be set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the SPV or any of its subsidiaries shall not, except with the previous written consent of NICDIT and BIADA, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

3.3.3 Urban Services

The SPV shall, where necessary, apply for, sign and obtain the necessary licenses, permits and approvals, as may be required under Applicable Law, to be able to develop the necessary infrastructure for and to provide the Urban Services. The GoBhas, under the State Support Agreement, agreed to provide necessary support and assistance to enable the SPV to obtain such licenses, permits and approvals, including, but not limited to, procuring the necessary notification by the Governor of

the State of Bihar under the Proviso to Article 243Q of the Constitution of India or any other provisions of Applicable Law.

3.3.4 Additional Land

In case of requirement of additional land by the SPV for development of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, a requisition for the same duly approved by the Board of the SPV and BIADA, shall be submitted to Department of Industries, Government of Bihar. Such additional land shall be leased/transferred to the SPV on terms *mutatis mutandis* as provided herein for the lease/transfer of the Project Land, and upon such lease/transfer, such additional land shall be treated as equity of BIADA in the share capital of the SPV, subject to a ceiling of [Rs. 3000,00,00,000 (Rupees Three Thousand Crore)] being the agreed equity contribution of BIADA in the SPV. A matching contribution shall be made by NICDIT to maintain shareholding ratio as per clause 3.1.5 above, subject to a ceiling of Rs. 3000,00,00,000 (Rupees Three Thousand Crore). If the value of the additional land exceeds the aforementioned equity contribution ceiling, the amount in excess of Rs. 3,000,00,00,000 (Rupees Three Thousand Crores) shall be treated as soft loan provided by BIADA on terms and conditions as may be agreed with the Board of the SPV. The SPV may, by notice given to BIADA require BIADA to initiate and undertake proceedings for acquisition of such additional land under the provisions of the Applicable Laws, and BIADA shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided that the cost of acquisition of such additional land acquired under this Clause 3.3.4 shall be determined in accordance with Clause 3.4.2(b) below and shall be borne by the SPV in accordance with this Agreement. It is further agreed that the SPV may, at any time, suo moto acquire any land in addition to the Project Land, required for the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects.

3.2 Functions and Responsibilities of the Parties

3.4.1 SPV

The Parties undertake to ensure that the SPV shall and they shall cause the SPV to, assume and undertake the following functions and responsibilities:

- (a) In order to enable the SPV to undertake the Principal Business and performance of any or all of the obligations under this Agreement, the Parties agree that the functions and responsibilities specified in **Part A of Annexure A**, including any other matter necessary and/or incidental to the development, construction, operation and maintenance of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects, shall be undertaken exclusively by the SPV or any subsidiary or subsidiaries of the SPV identified by the SPV.
- (b) To ensure that the SPV is duly authorised and empowered to undertake the Principal Business and carry out its functions specified in **Part A of Annexure A**, NICDIT and BIADA shall take such steps as may be necessary, including but not limited to, delegating and assigning appropriate powers necessary and required under Applicable Law, to the SPV, as envisaged under this Agreement and in accordance with Applicable Law.

3.4.2 Nodal Authority/BIADA

- (a) The functions and responsibilities of BIADA in relation to the Principal Business shall be as detailed in **Part B of Annexure A**. GoB/BIADA shall ensure that the SPV is designated and notified as the [Gamhariya/ Gaya/ *please insert name of the area in Bihar* Industrial Area Development Authority] under the provisions of BIADA Act and other Applicable Laws, in

respect of the Site (“**Planning Authority**”).GoB shall also notify the Site as an Industrial Area, pursuant to Applicable Law. The notification of the SPV as the Planning Authority shall be a condition precedent to the equity contribution by NICDIT, to be infused by NICDIT in accordance with the terms hereof, over and above the initial equity contribution as set out under Clause 6.2 herein below.

- (b) GoB/BIADAhas [acquired certain land parcels and is in the process of acquiring the remaining land parcels constituting the Project Land] free from all encumbrances, and willtransfer/lease the same to the SPV on terms mutually agreed between the Parties in the Lease Agreement at a cost equivalent to the cost of acquisition of the Project Land. GoB/BIADA further warrants that the Project Land shall be free of all Encumbrances for the term of the Lease Agreement. For the avoidance of doubt, the cost of acquisition byGoB/BIADA shall be the compensation paid or to be paid by GoB/BIADAfor the acquisition of Project Land, to persons from whom land has been acquired/shall be acquired, and shall not include any premium, interest, development charge, administrative charge, land pooling charges, or any supplemental or incremental charge by whatever name called,or enhanced compensation to be paid subsequently due to any dispute or pursuant to any judicial or other proceedings in relation of land acquisition, or the stamp duties and registration fees, if any payable, on the conveyance of the Project Land to the SPV, but shall include statutory interest payable under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 paid by the GoB/BIADA in connection with the acquisition of the Project Land. Further, any interest, fee or charges payable to any bank or financial institution in respect of any loan facility granted for acquisition of land or related purposes, shall be excluded from the cost of acquisition.
- (c) Upon transfer/lease ofthe Project Land to the SPV, as specified in Sub-Clause (b) above, including the additional land acquired under Clause 3.3.4 above, BIADA shall recommend and support an application by the SPV to the GoB, to be designated as Planning Authority under the provisions of BIADA Act, in respect of the Site. After issuance of necessary notification by GoB, the relevant authority shall cease to be the designated Planning Authority in respect of the Integrated Manufacturing Cluster.
- (d) Without limiting to the generality of the provisions in Clause 3.2 above, GoB/BIADA agrees that, till such time that the SPV is designated as the Planning Authority, as envisaged in Sub-clause (c) above, GoB/BIADA shallensure that the Planning Authority, subject to Applicable Laws, assigns and delegates on an exclusive basis to the SPV, all the functions to be carried out by the Planning Authority under the provisions of Applicable Laws, in its capacity as the [Gamhariya/ Gaya/ • *please insert name of the area in Bihar Industrial Area Development Authority*]in respect of the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects.
- (e) Where, for any reason whatsoever, GoB/BIADA/Planning Authority is unable, due to application of any law or otherwise for reasons acceptable to NICDIT/GoI, unable to ensure the delegation/delegate, as the case may be, all or some of the functions of the Planning Authority under theApplicable Laws, as envisaged in Clause 3.4.2(c) above, then GoB shall duly appoint and/or nominate the SPV on an exclusive basis to undertake these functions and shall thereafter, accept all the recommendations of the SPV in relation to

the functions carried out by it and shall, where necessary, take such steps as may be required under the provisions of the Applicable Laws, in its capacity as the Planning Authority, under the said Applicable Laws to ratify and/or approve such recommendations from the SPV.

- (f) Without limiting the generality of the above, GoB/BIADA shall ensure that the Planning Authority accepts and adopts the Master Plan in relation to the Integrated Manufacturing Cluster and take all such actions as may be required to make such Master Plan valid and effective for purposes of Applicable Laws. GoB/BIADA shall ensure that the Planning Authority shall not make any modifications and/or amendments to the Master Plan in relation to the Integrated Manufacturing Cluster, except with the prior written approval of the NICDIT. The Planning Authority/GoB shall be entitled to provide comments on the recommendations including with respect to the Master Plan in relation to the Integrated Manufacturing Cluster, and the SPV shall duly consider these comments while finalising its recommendations and the Master Plan.
- (g) BIADA and the GoB undertake to ensure that the SPV shall be the authority responsible for implementation of the Integrated Manufacturing Cluster and shall be the sole and exclusive authority responsible for all the functions to be carried out by any authority under the provisions of Applicable Laws, in respect of the Integrated Manufacturing Cluster.

3.4.3 NICDIT and NICDC

- (a) The functions and responsibilities of NICDIT shall be as detailed in **Part C of Annexure A.**
- (b) BIADA and the SPV recognise and acknowledge that the NICDC has been mandated by the GoI to develop and implement the AKIC Project, including the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects. BIADA and SPV also recognise and acknowledge that the NICDC has already expended significant effort in planning and developing the diverse projects under the AKIC Project, including for the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects, and such planning and development includes preparation of the perspective plans, Master Plans and DPRs. The Parties also recognise and acknowledge that NICDC has acquired special technical and commercial expertise and experience in developing industrial townships such as the Integrated Manufacturing Cluster. In the circumstances, without limiting the generality of **Part C of Annexure A,** and in accordance with the approval granted by the Union Cabinet, the Parties recognise, acknowledge and agree that the NICDC (either directly or through a project management company) shall act as the project development agency, knowledge partner and transaction advisor to the SPV and BIADA for the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects, and the development and management of the Master Plan, including any changes thereto, shall be within the exclusive domain of the NICDC. With regard to the above,
 - NICDC will get all plans, techno-economic studies, engineering designs prepared, obtain requisite approvals, tie up finances, VGFs, structure projects on PPP and EPC basis, tender out projects and get them executed and supervise them;
 - NICDC will help in capacity building of the SPV and associated State institutions;

- the Parties also agree that the projects shall be executed through transparent competitive bidding process which will be conducted independently by NICDC on behalf of the SPV or its subsidiaries; and
- The Parties further agree that NICDC will be entitled to success fees from successful project developers or the SPV, as the case may be, on successfully bidding out projects.

3.3 Development of Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects

3.5.1 The SPV shall construct, operate, maintain and manage the Integrated Manufacturing Cluster to bring it to and maintain it at a world class standard in terms of the quality of the facilities, management and the quality of service provided to all Users. Without prejudice to the generality of the forgoing, the SPV shall undertake the following in order to establish mechanisms to review and assess performance in respect to service delivery and management systems.

3.5.2 Development Standards and Requirements: It is the intention of the Parties to achieve a world-class Integrated Manufacturing Cluster with world-class facilities. The construction, operation, maintenance and management of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects will comply with all appropriate technical requirements as set out in international, national and local standards and laws, and in particular will comply with the requirements recommended by NICDC as the project development partner in accordance with Clause 3.4.3 (b) of this Agreement.

3.4 Facilities Development

3.6.1 The SPV shall undertake the Facilities Development on the Site specified in Schedule A, and to exploit such development for commercial purposes with the right to sell, lease, license any or all parts thereof and demand and collect Fees and undertake such other activities incidental thereto or necessary for the same, as specified in Clause 3.2.5. above.

3.6.2 The development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drains as part of the Facilities Development, shall be undertaken or caused to be undertaken by the SPV in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

3.6.3 Operation & Maintenance of Facilities Development: The SPV shall comply with this Agreement, Applicable Laws and Good Industry Practice in the operation, maintenance and management of the Facilities Development (either directly or through PPP/ project management company) and shall make commercial use thereof subject to the provisions of this Agreement and Applicable Laws.

3.6.4 Taxes and Revenues

- (a) The SPV shall be entitled to recover Fee from the Users of the Facilities Development.
- (b) All costs, expenses, taxes, cess, fees and charges relating to the Facilities Development, other than taxes on property, shall be borne by the SPV and may be recovered from Users.
- (c) All revenues accruing from the Facilities Development shall be appropriated by the SPV in accordance with the provisions of this Agreement and Applicable Laws. The Parties agree that all profits generated by SPV shall be solely applied towards development of Integrated Manufacturing Cluster. However, in the event the profits generated by the SPV are surplus and not required for the Industrial Township Project, the same may be considered for distribution by way of dividend or otherwise, as per the Companies Act.
- (d)

3.6.5 Restrictions on use of Facilities Development

The SPV shall ensure that the development and use of Facilities Development is in accordance with the provisions of Applicable Laws and may include construction and operation of industrial parks, residential and commercial facilities, hotels, restaurants, convention centre, retail shops for residents and Users, office complexes, shopping malls, industrial park, commercial park or entertainment complex and such other Construction Works as may be determined by the SPV.

4 **PROJECT SITE**

4.1 The Site

The site of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall comprise the land described in **Schedule-A** that shall be acquired and transferred by GoB to BIADA, which will be further leased by BIADA to the SPV and in respect of which the Right of Way shall be provided and granted by BIADA to the SPV under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and includes Facilities Development. Notwithstanding anything contained in this Agreement, the SPV shall have a right to sub lease the Site on terms and in the manner prescribed in the Lease Agreement.

4.2 Right, Title and Interest and Right of Way

4.2.1 BIADA hereby undertakes to transfer the Site (along with the leasehold rights, title and interest in the Site) to the SPV, free of all and any Encumbrances of any kind, and warrants that the Site remain free of all Encumbrances for the term of the Lease Agreement and shall ensure that the SPV shall have possession of and access to the Site for undertaking all and any activities, including but not limited to carrying out any surveys, investigations and soil tests, zoning, development and construction of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects. The Parties agree that the Site shall be leased as per the present land policy of the GoB, that is to say lease for the period of [●] years, with automatic renewal on every expiry of the term thereof, in accordance with the terms of the Lease Agreement. The Lease Agreement executed for such transfer shall not place any onerous conditions on the SPV and shall be in accordance with the Lease Agreement, substantially in the form set forth in **Schedule-F** of this Agreement.

4.2.2 In consideration of the mutual covenants contained herein, BIADA, in accordance with the terms and conditions set forth herein, hereby undertakes to facilitate the transfer of leasehold right, title and interest to the SPV, in respect of all the land, together with any buildings, constructions or immovable assets and other structures, if any, thereon and also all trees, waterways, channels, natural resources and features on the surface whatsoever and usufructuary rights thereon, comprising the Site which is described, delineated and shown in **Schedule-A** hereto, on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, including the Facilities Development, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, with the complete rights to the SPV to commercially exploit the same in the manner envisaged in this Agreement.

4.3 Procurement of the Site

4.3.1 BIADA, NICDIT and the SPV shall, on a mutually agreed date and time and in any event, no later than 180 (one hundred and eighty) days from the date hereof, inspect

- the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted by the GoB/BIADA to the SPV. Signing of the memorandum, in 3 (three) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties and the SPV shall be deemed to constitute a valid licence and Right of Way to the SPV for free and unrestricted use and development of the vacant and unencumbered Site under and in accordance with the provisions of this Agreement. BIADA by itself, or through GoB agencies, shall ensure the vacant possession and access to the parts of the Site as set forth in the Appendix and deliver/handover the same to the SPV, no later than 180 (one hundred and eighty) days, from the date of the memorandum.
- 4.3.2 Without prejudice to the provisions of Clause 4.3.1 above, the Parties hereto agree that on or prior to 6 (six) months from the Effective Date, BIADA shall have granted peaceful possession, vacant access and Right of Way such for the Site such that the Appendix to the memorandum (referred to in Clause 4.3.1 above), does not include more than 10 % (ten per cent) of the total area of the Site. For the avoidance of doubt, BIADA acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of roads, drainages network, sewage network, power trenches and other utility networks, etc.
- 4.3.3 BIADA shall, if so required by the SPV, ensure (by itself or through any other GoB agencies) on behalf of the SPV, additional land in addition to the Site, in accordance with Applicable Laws, over and above the Project Land, required for ancillary buildings, maintenance depots, electric sub-stations, water treatment plants, effluent treatment plants or other construction of works for the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the SPV. The cost of land acquired under this Clause 4.3.3 shall be borne by the SPV on the same principles set out Clause 3.4.2(b).
- 4.4 Site to be free from Encumbrances
BIADA shall ensure that the Site is made available by the appropriate Governmental Authority to the SPV pursuant hereto free from all Encumbrances and occupations, including for the avoidance of doubt, any existing rights of way, easements, privileges, liberties and appurtenances to the Site. The SPV shall be required to pay only such amounts as expressly specified herein and no other amounts whatsoever on account of any costs, compensation, expenses and charges for the acquisition and use of such Site shall be payable.
- 4.5 Protection of Site from encroachments
The SPV shall have the right to protect the Site from any and all occupations or encroachments and take appropriate action to clear any such occupations or encroachments. GoB through BIADA shall provide all assistance, including delegation of power to the SPV and/or exercising itself, the rights vested in it in this regard.
- 4.6 Utilities, Associated Roads and Trees
- 4.6.1 Existing utilities and roads
Notwithstanding anything to the contrary contained herein, the SPV shall have the right to cause the respective entities owning the existing roads, Right of Way or utilities on, under or above the Site to assign the same to the SPV such that the SPV is enabled to keep such utilities in continuous satisfactory use, and shall, if necessary

for the development of Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, initiate and undertake at the SPV's cost, legal proceedings for acquisition of any right of way necessary for the same.

4.6.2 **Shifting of obstructing utilities**

The SPV shall, subject to Applicable Laws and with assistance of BIADA, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects. The Board of the SPV shall decide on the compensation payable to BIADA or the entity owning such utility towards any costs associated with shifting of such utilities.

5 CONSTRUCTION AND OPERATION AND MAINTENANCE

5.1 **Obligations prior to commencement of construction**

5.1.1 Prior to commencement of Construction Works, the SPV shall:

- (a) appoint consultants of international repute and experience for preparation of master plan, development plans, zonal plans, detail plans, detailed project reports, detailed feasibility reports and any other related studies to be conducted prior to commencement of work, in consultation with the Parties;
- (b) appoint its representative, duly authorised to deal with the Parties, in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Construction Works under and in accordance with the Applicable Laws and Applicable Permits.

5.2 **Obligations post commencement of construction**

5.2.1 **Organisation of Site**

- (i) The SPV will organise the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labour and industrial relations and general site services including, without limitation, access to and on the Site, allocation of space for Contractors' and sub-contractors' offices and compounds and the restriction of access to the Site to authorised persons only.
- (ii) Neither the submission of any drawing or document under or pursuant to any provision of this Agreement or otherwise, nor its approval or disapproval, nor the raising of queries on, or the making of objections to or the making of comments, suggestions or recommendations on the same by BIADA shall prejudice or affect any of the SPV's rights, entitlements, obligations or liabilities in relation to design and construction, which shall always continue to remain with the SPV.

5.2.2 **Materials**

The SPV will ensure that the Construction Works will comprise only materials and goods which are of sound and merchantable quality and which are manufactured and prepared in accordance with Applicable Law and that all workmanship shall be in accordance with Applicable Law and with Good Industry Practice applicable at the time of construction and/or installation.

5.3 **MasterPlan for the Site**

- ##### 5.3.1
- NICDC has, as on the Effective Date, commenced preparation of the master plan, development plans, town planning scheme, development regulations and techno-

- economic feasibility reports/ detailed project reports (DPR) for the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects (collectively referred to as the “**Master Plan**”). The Parties agree that the Master Plan shall be duly adopted by the BIADA and subsequently by the SPV for the development of the Integrated Manufacturing Cluster Project with such modifications as may be deemed necessary.
- 5.3.2 As specified in Clause 3.4.3(b) above, the Master Plan shall be within the exclusive domain of the NICDC and accordingly, any review and/or amendments to the Master Plan shall be undertaken by NICDC and shall be adopted by the SPV.
- 5.3.3 NICDIT in consultation with the SPV shall review the Master Plan every [5] ([five]) years or earlier as may be mutually agreed. If, on such review, the NICDIT considers it necessary to revise the Master Plan to reflect changed circumstances at the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects, it shall revise the Master Plan and provide BIADA and GoB (through BIADA) and SPV with a copy of such revised Master Plan.
- 5.3.4 The SPV hereby undertakes to submit the Master Plan to NICDIT for its review and comments, before the expiry of [12 (twelve) months] from the Effective Date or such other date and time as may be mutually agreed between the Parties and the SPV, which thereafter must be updated and resubmitted to the GoI Agency and TSIIC, which shall submit the same to GoB for its review and comments periodically, every [5] ([five]) years. Provided however that the Master Plan shall be updated at shorter intervals, if NICDIT/NICDC finds that the population and traffic growth is such as to require more frequent updates or for any other reasonable reason in the event the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects reaches Users/ passenger capacity or other capacity restraints.
- 5.3.5 The SPV shall develop the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects in accordance with the then applicable Master Plan or techno-economic feasibility reports. Where an existing Master Plan is in place, the SPV shall develop the Integrated Manufacturing Cluster in accordance with that plan until a new Master Plan is prepared by the NICDC.
- 5.3.6 The Master Plan has been/ shall be approved by the GoB/BIADA under the provisions of the State Support Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby acknowledge and agree that nothing in this Clause 5.3 shall be deemed to mean that any approval of BIADA or SPV is required for any Master Plan (or any part thereof) submitted by the NICDC in accordance with the aforesaid provisions, including but not limited to any minimum projections. It is expressly agreed that the parameters constituting the Master Plan are and will remain within the sole discretion and domain of NICDC and NICDC shall be entitled to prepare the Master Plan in consultation with GoB solely based on its projections and assessments.
- 5.4 Development Plan
- 5.4.1 The SPV shall develop the Integrated Manufacturing Cluster Projects in accordance with the Master Plan. The SPV, through NICDC, shall prepare a development plan for each component of the Master Plan (“**Development Plan**”), and shall ensure that each such development is undertaken by Contractors selected pursuant to a competitive bidding process.
- 5.4.2 The SPV shall submit each Development Plan as soon as it is prepared, to NICDIT and BIADA for its review and approval.
- 5.4.3 The Parties recognise that since the Development Plan flows from the approved Master Plan, therefore, it will not require any separate approval of the GoB/BIADA under the provisions of any law. In the event, it is determined at any stage that the

Development Plan too requires approval of the GoB/BIADA under the provisions of Applicable Laws, in such event, BIADA undertakes to obtain/grant such approval to the Development Plan prepared under this Clause 5.4. It is expressly agreed that the preparation of Development Plan is and will remain within the sole discretion and domain of NICDC, and NICDC shall be entitled to prepare the Development Plan solely based on its projections and assessment subject to approval of the Board of SPV.

5.5 Construction of the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects

5.5.1 The SPV shall undertake construction of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects including the Facilities Development, in accordance with the provisions of this Agreement.

5.5.2 The SPV shall construct the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects in accordance with the Master Plan and the Development Plan.

5.6 Monitoring of Construction

5.6.1 Periodic progress reports

The SPV shall furnish to the Parties a [quarterly] report on the progress of the Construction Works and shall promptly give such other relevant information as may be required by the Parties.

5.7 O&M obligations of the SPV

5.7.1 The SPV shall operate and maintain the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects in accordance with this Agreement either by itself, or through O&M Contractors and/or through joint ventures, subsidiary companies or other entities identified by it. The obligations of the SPV hereunder shall include:

- (a) permitting safe, smooth and uninterrupted movement of Users and flow of traffic within the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects under normal operating conditions;
- (b) collecting and appropriating the Fee;
- (c) managing use of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects by the diverse Users, including managing traffic flow and minimising disruption to Users;
- (d) providing Urban Services to the Users;
- (e) undertaking maintenance and repairs;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects;
- (g) protection of the environment and provision of equipment and materials thereof;
- (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects;
- (i) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (j) operation and maintenance of all Integrated Manufacturing Cluster Project assets diligently and efficiently and in accordance with Good Industry Practice; and
- (k) maintaining a high standard of cleanliness, sanitation and hygiene on the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects.

- 5.7.2 The SPV shall prepare an annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) in respect of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects. Such Maintenance Programme shall broadly include:
- preventive maintenance schedule;
 - arrangements and procedures for carrying out urgent repairs;
 - criteria to be adopted for deciding maintenance needs;
 - intervals and procedures for carrying out inspection of all elements of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects;
 - intervals at which the SPV shall carry or cause to be carried out, periodic maintenance;
 - arrangements and procedures for carrying out safety related measures;
 - intervals for major maintenance works and the scope thereof.

6 SHARE CAPITAL

- 6.1 The SPV shall have an initial authorised share capital of Rs. 5,00,00,000 (Rupees five crore only) divided into 50,00,000 (fifty lakh) Shares and the paid-up share capital of the SPV shall be Rs. 5,00,00,00 (Rupees five crore) divided into 50,00,000 (fifty lakh) Shares.
- 6.2 At the time of incorporation of the SPV, NICDIT shall subscribe to and pay for 25,00,000 (twenty-five lakh) Shares and BIADA shall subscribe to and pay for 25,00,000 (twenty-five lakh) Shares, in cash or such other form as may be mutually determined between the Parties. Upon subscription of the Shares, NICDIT shall hold 50% (fifty per cent) and BIADA shall hold 50% (fifty per cent) of the issued, subscribed and paid-up equity capital of the SPV.
- 6.3 Subject to the limit of capital contribution set forth in Clause 6.5 below, in the event of further issue of Shares by the SPV, each Shareholder shall be entitled to subscribe to and purchase the number of Shares in proportion to their existing shareholding in the SPV, such that each Party i.e. NICDIT and BIADA, by themselves and/or through their Affiliates, shall continue to have equal shareholding in the SPV.
- 6.4 The cost of acquisition of land incurred by BIADA will be treated as its equity contribution to the SPV and the aforementioned Shares will be issued by the SPV at par value to BIADA which shall not exceed 50% (fifty percent) of the issued, subscribed and paid-up equity capital of the SPV. The total capital contribution of NICDIT in the SPV shall be in cash and exactly equal to the cost of acquisition of Project Land (and any additional land required for the Project in the future), and any equity contribution to be made by BIADA in the future is subject to a maximum limit of Rs. 3000,00,00,000 (Rupees three thousand crore only). The Parties agree that any contribution by any Party in excess of maximum limit of their equity in the SPV, unless agreed otherwise, shall be treated as a loan to the SPV and shall have the repayment terms and carry an interest as may be mutually decided between the Parties and the SPV, from time to time.
- 6.5 Subject to the limit of capital contribution set forth in Clause 6.4 above, in the event of further issue of Shares by the SPV, each Shareholder (by themselves and/or through their Affiliates) shall be entitled to subscribe to and purchase the number of Shares in proportion to their existing shareholding in the SPV.
- 6.6 Each Party with the prior written consent of the other Party shall be entitled to assign to any of its respective Affiliates the right to subscribe to, acquire and hold any Share which the Party is obliged or entitled to subscribe, acquire or hold, with the prior written consent of the other Party, provided that the relevant Party shall have obtained written consent of the Affiliate confirming that: (i) such Affiliate shall

- abide by the terms of this Agreement, and shall be treated as the same shareholder group as the relevant Party, and (ii) effective provision shall be made whereby the Affiliate shall be required, prior to the time when it ceases to be an Affiliate of the Party, to transfer such Shares to another Affiliate of the Party.
- 6.7 It is the intention of the Parties to minimize their equity investment in the Integrated Manufacturing Cluster Project. However, if additional funding is required the Parties shall, in the first instance, try to obtain such funding through third party debt. If such funding is not available, the Parties should invest their own funds in the most tax efficient manner (one of the options being by way of grant of shareholders loans to the SPV) pro rata in proportion to their respective shareholding. The Parties agree that in the event NICDIT or BIADA invest any money by way of a grant of shareholder loan or any other manner, other than equity investment, to the SPV, such fund shall not be subordinate to the unsecured loans taken by the SPV, if any.
- 7 THE BOARD AND MANAGEMENT**
- 7.1 Composition**
- 7.1.1 At the time of incorporation, the Board shall comprise of 6 Directors in total (including the Chairman), consisting of 3 Directors each nominated by NICDIT and BIADA. So long as NICDIT and BIADA hold Shares in the proportion set out in [Clause 6.2 above], there shall always be an equal number of Directors appointed by each of NICDIT and BIADA. Upon a change in shareholding pattern of the SPV, NICDIT and BIADA shall be entitled to nominate and appoint Directors pro-rata to their shareholding percentage in the SPV, with any fraction less than half being rounded off to the lower whole number and any fraction greater than or equal to half being rounded off to the next higher whole number.
- 7.1.2 So long as NICDIT and/or its Affiliates maintain not less than 10% shareholding in the SPV, NICDIT shall be entitled to nominate 1 (one) Directors.
- 7.1.3 So long as BIADA and/or its Affiliates hold not less than 10% shareholding in the SPV, BIADA shall be entitled to nominate 1 (one) Directors.
- 7.1.4 Subject to the provisions of the Act, NICDIT and BIADA shall each be entitled to nominate alternate directors for each of the Directors it is entitled to nominate. Such appointment of alternate directors shall take place as the first item of business at the Board meeting following receipt by the SPV of such nomination.
- 7.1.5 NICDIT and BIADA in their respective capacity as Shareholders shall elect and cause to be elected as Directors the candidates so nominated and shall cause their Directors to appoint as Directors, alternate Directors and/or Chairman the candidates so nominated.
- 7.1.6 Each Party in its sole discretion shall have the right to replace any Director, including any alternate Director nominated by it at any time and without cause, and the Parties shall both undertake all necessary action to ensure the formal election of such replaced Director as the first item of business at the next occurring Board meeting.
- 7.1.7 The appointment or removal of Directors shall be made by a notice in writing addressed to the SPV by the respective Parties.
- 7.1.8 The Chairman of the SPV shall be appointed by the Board of the SPV and the CEO and Managing Director shall be nominated by BIADA with prior approval of NICDIT. It is further agreed that the CEO and Managing Director shall be appointed for a minimum term of 3 (three) years from the date of appointment. The Chairman shall not have a casting vote in case of a tie at any Board Meeting or at any General Meeting.
- 7.1.9 Subject to the provisions of the Act and the Articles of Association, the SPV shall be managed by the Board, who may exercise all such powers of the SPV as are not

- provided by the Act or by the Articles required to be exercised by the SPV in General Meeting, subject to this Agreement.
- 7.2 Board Meetings**
- 7.2.1 The SPV shall hold the first meeting of the Board within 30 (thirty) days of the date of incorporation. Thereafter, the Board shall meet at least once in every calendar quarter, in accordance with the Act, at a location determined by the Board at its previous meeting or thereafter with the concurrence of the Chairman. The Board may meet more often from time to time as it deems necessary. The location for holding the Board meeting shall be determined by the Board at its previous meeting or thereafter, with the concurrence of the Chairman.
- 7.2.2 Subject to the provisions of the Act, at least 7 (seven) days written notice of every Board meeting shall be given to every Director and every alternate director at their usual address whether in India or abroad, provided always that a meeting may be convened by a shorter notice than 7 (seven) days with consent of all the Directors.
- 7.2.3 The notice of each Board meeting shall include an agenda setting out the business proposed to be transacted at the meeting. Unless waived in writing by all Directors, any item not included in the agenda of a meeting shall not be considered or voted upon at that meeting of the Board.
- 7.2.4 Each Party shall cause the Directors nominated by such Party to vote at Board meetings to appoint every alternate director appointed by the respective Parties.
- 7.2.5 Subject to Clauses 7.1.2 and 7.1.3 above, the quorum for a Board meeting shall be in accordance with the Act and shall at least comprise of 1 (one) Director nominated by NICDIT and 1 (one) Director nominated by BIADA present (at the commencement of and throughout the duration of the meeting) and voting.
- 7.2.6 Subject to provisions of the Act, all decisions of the Board shall be by majority of votes passed by the Directors present at the meeting, subject to approval by of at least 1 (one) Director representing each Party.
- 7.2.7 A resolution by circulation shall be as valid and effectual as a resolution duly passed at a meeting of the Directors called and held provided it has been circulated in draft form, together with the relevant papers, if any, to all the Directors and has been approved by all the Directors, entitled to vote thereon, unanimously.
- 7.2.8 Notwithstanding anything to the contrary contained in this Agreement and subject to the provisions of the Act, so long as the GoI Agency holds not less than 10 % (ten per cent) of the share capital of the SPV, no action shall be taken by Board of the SPV at any Board Meeting or by resolution by circulation, with respect to any of the Affirmative Vote Items, as specified in **Schedule G**, without the affirmative vote of all the Directors appointed by the NICDIT. The right of affirmative vote available to NICDIT under this Clause 7.2.8 will fall away in respect of the NICDIT when such Party ceases to hold Shares constituting 10% (ten per cent) of the share capital of the SPV, and upon happening of such an event, the decisions of the Board shall be passed in accordance with the provisions of the Act.
- 7.2.9 The Affirmative Vote Items must be referred to the Board, in writing and no Director, officer, employee, agent or any of their respective delegates shall take any action in relation to any such Affirmative Vote Item without the prior approval of the Board, granted in the manner described above.
- 7.2.10 In the event that the Directors are unable to reach a decision on any matter in accordance with Clauses 7.2.6 and Clause 7.2.8, then within 15 (fifteen) Business Days of such resolution first being tabled at the Board Meeting, the subject of any such resolution shall be referred immediately to NICDIT and BIADA and the matter shall be dealt in accordance with provisions mentioned in Clause 9.1 and 9.2 of this Agreement.

7.2.11 The Parties shall bear the travel, board and lodging expenses incurred by the Directors nominated by them in attending Board meetings, General Meetings, and other official business for Directors of the SPV.

7.3 Management

7.3.1 The Board of the SPV shall delegate the management of the Business to a team of professionals employed by the SPV.

7.3.2 The CEO and Managing Director shall be responsible for the day-to-day operations and management of the SPV, subject to the direction, superintendence and control of the Board.

7.3.3 All appointments of professional managers for key management positions of the SPV shall be mutually determined between the Parties subject to the provisions of the Act.

8 **GENERAL MEETINGS OF SHAREHOLDERS**

8.1 The quorum for all meetings of the Shareholders (“**General Meetings**”) shall be as per the provisions of the Act, provided that quorum shall always include at least 1 (one) representative of each of NICDIT and BIADA present at the commencement of and throughout the meeting, and voting. A corporate shareholder represented by a duly authorised representative shall be deemed to be present in person for purposes of this Clause 8.1. If there is no quorum present in a General Meeting, there shall be no voting at such meeting.

8.2 The Board shall convene a General Meeting in accordance with the provisions of the Act. The Board shall proceed to convene a General Meeting if so requisitioned in accordance with the provisions of the Act by either of the Parties or by at least 2 (two) Directors, 1 (one) nominated by each NICDIT and BIADA. Till such time that NICDIT and BIADA hold Shares constituting 10% (ten per cent) of the share capital of the SPV, no quorum shall arise unless NICDIT and BIADA are represented through their authorised representative/nominee at such meeting.

8.3 Every resolution to be passed at a General Meeting, shall be passed in accordance with the Act and Applicable Law.

8.4 Notwithstanding anything to the contrary contained under this Agreement and subject to the provisions of the Act, so long as NICDIT holds not less than 10 % (ten per cent) of the share capital of the SPV, no action shall be taken by Shareholders of SPV at any General Meeting and no resolution shall be passed with respect to any of the Affirmative Vote Items, as specified in **Schedule G**, without the affirmative vote of NICDIT as a Shareholder present at such meeting, whether voting in person or by proxy, in accordance with the provisions of the Act. The right of affirmative vote available to NICDIT under this Clause 8.4 will fall away when NICDIT ceases to hold Shares constituting 10% (ten percent) of the share capital of the SPV, and upon happening of such an event, the resolutions of the Shareholder meetings shall be passed in accordance with the provisions of the Act.

8.5 The Affirmative Vote Items must be referred to the General Meeting, in writing and no Shareholder, officer, employee, agent or any of their respective delegates shall take any action in relation to any such Affirmative Vote Item without the prior approval of NICDIT at the General Meeting, granted in the manner described above.

8.6 In the event that the Shareholders are unable to reach a decision on any matter, in the manner prescribed in Clauses 8.3 and 8.4 above, within 15 (fifteen) Business Days of such resolution first being tabled at the meeting, the subject of any such resolution shall be referred immediately to NICDIT and BIADA, and the matter shall be dealt in accordance with provisions mentioned in Clauses 8.7 and 8.8 of this Agreement.

8.7 If the Shareholders cannot reach agreement on any matter referred to them under Clauses 7.2.6, 7.2.8, 8.3 or 8.4 herein above, then within 15 (fifteen) Business Days of that matter being referred to them (a “**Deadlock Matter**”), the Shareholders shall refer the Deadlock

Matter to their respective chairman/ chief executive officer for resolution. Either chairman/ chief executive officer of a Shareholder may nominate an independent third party acceptable to the other Party's chairman/ chief executive officer to act as mediator to assist them to resolve the Deadlock Matter.

- 8.8 Notwithstanding anything contained in this Agreement, if the Deadlock Matter cannot be resolved by the chairman/ chief executive officer of the respective Shareholders within 15 (fifteen) Business Days of the matter being referred to them, a deadlock shall be deemed to exist ("**Deadlock**") and the provisions of Clauses 13.3 and 13.4 hereof shall apply. It is clarified that pending the resolution of a Deadlock Matter, as specified hereinabove, the Parties shall ensure that the same does not in any manner whatsoever obstruct the smooth operation and functioning of the SPV.

9 TRANSFER OF SHARES

- 9.1 Except as permitted hereunder, no Party shall have the right to transfer any of its Shares for a period of 10 (Ten) years from the Effective Date ("**Lockin Period**"). Each Party shall have the right to transfer, at any time, any of the Shares held by it to one or more of its respective Affiliates with the prior written consent of the other Party, provided that in connection with any such transfer, the transferor shall have obtained the written consent of the transferee, confirming that (i) the transferee shall abide by the terms of this Agreement applicable to the transferor and shall be treated as the same shareholder group as the transferor, and (ii) effective provision shall be made whereby the transferee shall be required, prior to the time when it ceases to be an Affiliate of the Party, to transfer such Shares to another Affiliate of the Party.
- 9.2 Subject to the provisions of Clause 9.1 above, upon the expiry of the Lock in Period, if at any time a Party desires to transfer ("**Offeror**") all or part of its shareholding in the issued, subscribed and paid-up equity share capital of the SPV to a third person, it shall first offer all such Shares, to the other Party ("**Offeree**") and the procedures in Clauses 9.3 to 9.6 shall apply.
- 9.3 The Offeror shall give notice in writing ("**Transfer Notice**") to the Offeree stating:
- The number of Shares to be transferred;
 - The asking price of each Share;
 - The date by which the offer must be accepted (which must be no sooner than 30 (thirty) days after the date on which the Transfer Notice is delivered); and
 - Payment terms.
- 9.4 If the Offeree decides to accept the offer for all the offered Shares, it shall by the date indicated in accordance with Clause 9.3(c) so notify the Offeror in writing of its acceptance (the date of such acceptance notice being the ("**Acceptance Date**") and pay for such Shares within 30 (thirty) days of the Acceptance Date. Upon receipt of payment, the Offeror shall deliver to the Offeree the relevant share certificates and transfer documents. The time taken for obtaining all approvals required pursuant to Clause 9.5 hereof shall be excluded from the time limits otherwise set out in this Clause 9.
- 9.5 Should approval of any authority in India be required for a sale of Shares pursuant to this Clause 9, the Offeree shall have made or make an application within 30 (thirty) days of the Acceptance Date for such approvals. If said authority accepts such applications on conditions (as to price and otherwise) different from those stated in the application, each Party shall decide whether it is willing to conclude the sale on such conditions, but if both Parties do not agree as to such different terms, the sale of Shares shall not be concluded on such terms and any subsequently proposed transfer pursuant to this Clause 9 shall be commenced as a new offer. If for any reason whatsoever such approval is not received within 180 (one hundred and eighty) days of

- making the application or such further period as the Offeror may prior to expiration thereof allow, the Offeror shall be at liberty to withdraw the offer.
- 9.6 If the Offeree declines the offer, or fails to respond to the offer prior to the deadline indicated in Clause 9.3(c), or accepts the offer but fails to pay the purchase price within the times indicated by Clauses 9.4 and 9.5, the Offeror may then, within the next 90(ninety) days, offer to sell the Shares covered by the offer to any third Person at a price no less than the price at which the Shares were offered to the Offeree and upon the same terms offered to the Offeree, subject to written consent from the Offeree that the Offeree does not object to the third party, as long as the third person accepts the offer and concludes the purchase within the time frames permitted the Offeree in Clauses 9.3, 9.4 and 9.5.

10 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

- 10.1 Each of the Parties represents and warrants that:
- (a) where relevant, it is validly incorporated/established and is in good standing under the laws of India;
 - (b) such Party has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary action (corporate, statutory, contractual or otherwise) to authorize the execution, delivery and performance of this Agreement;
 - (c) this Agreement has been duly executed and delivered by such Party and constitutes a legal valid and binding obligation of such Party, enforceable against such Party in accordance with its terms;
 - (d) the execution, delivery and performance by such Party of this Agreement and the acts and transactions contemplated hereby do not and will not, with or without the giving of notice or lapse of time or both, violate, conflict with, require any consent under or result in a breach of or default under:
 - (i) any law to which it is subject; or
 - (ii) any order, judgment or decree applicable to it; or
 - (iii) any term, condition, covenant, undertaking, agreement or other instrument to which it is a party or by which it is bound;
 - (e) there are no legal, quasi-legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgments or decrees of any nature made, existing, or pending or, to the best knowledge of such Party, threatened or anticipated against such Party which may prejudicially affect the due performance or enforceability of this Agreement or any obligation, act, omission or transactions contemplated hereunder; and
 - (f) that it will comply with all Applicable Laws, regulatory requirements in connection with the performance of its obligations under this Agreement and will not do or permit anything to be done which might cause or otherwise result in a breach of this Agreement or cause any detriment to the transactions herein envisaged.

11 ACCOUNTING AND FINANCE

- 11.1 The SPV shall keep true and accurate accounting records of all operations, and such records shall be open for inspection by each Party or by its duly authorised representatives, at all times, during normal business hours, and with sufficient notice so as not to disrupt the SPV's operations. The SPV shall submit to the Parties quarterly accounting reports in a form to be mutually agreed between the Parties.
- 11.2 The SPV shall adopt all the norms regarding accounting and auditing which as may be applicable to it under the Act. The financial statements of the SPV shall be audited

- at the SPV's expense by an independent certified accounting firm selected by mutual agreement between the Parties, as required under Applicable Laws.
- 11.3 During office hours of the SPV, the Parties shall have full access to, and right to make copies of, all books of account, records and the like of the SPV. Any information obtained by the Parties through exercise of this right of access shall (i) be used by such Party only for purposes which are consistent with its status as a Shareholder and not for the pursuit of business interests outside that of the SPV, and (ii) be subject to the confidentiality provisions of Clause 15 of this Agreement.
- 11.4 Declaration and distribution of any dividend or repayment of Shareholders loans or, as the case may be, any other distribution of funds to the Shareholders shall be as per the provisions of the Act, and decided by a unanimous vote of the Board.
- 11.5 The Financial Year of the SPV shall comprise a period of 12 (twelve) months commencing on 1 April and ending on 31 March of the following calendar year ("Financial Year"). The first Financial Year shall be for the period commencing from the date of incorporation of the SPV ending on 31 March of the following calendar year.

12 EFFECTIVE DATE

This Agreement shall take effect from the date of its execution by the Parties.

13 TERM AND TERMINATION

13.1 Term

This Agreement is intended to be of enduring nature having regard to the mutual objectives and stipulations in this Agreement and shall take effect as of its execution and shall continue in force until terminated in accordance with its provisions. If a Shareholder ceases to hold any Shares, this Agreement shall terminate as to that Shareholder only.

13.2 Termination

Without prejudice to any claim for any antecedent breach, any Party shall be entitled at its option, on the happening of any of the following events, to terminate this Agreement:

- (a) by giving to the other Party, 30 (Thirty) days written notice, if the other Party becomes or is declared bankrupt, insolvent or goes into voluntary or compulsory liquidation, except for the purpose of amalgamation or reconstruction; or
- (b) by giving to the other Party, 45 (Forty-Five) days written notice, if any distress or attachment is levied, or any receiver is appointed in respect of the business or a substantial part of the property or assets of the other Party, or if it takes any similar action in consequences of debt; or
- (c) by giving to the other Party, 45 (Forty-Five) days written notice, if there is a Government expropriation, nationalisation or condemnation of all or substantial part of the assets or capital stock of the other Party; or
- (d) by giving a notice in writing to the other Party, if the other Party is in material breach of any provision of this Agreement and such breach has not been remedied (to the reasonable satisfaction of the Party not in breach) within 45 (Forty-Five) days of notice of such breach having been served on that Party by the other Party; or
- (e) by giving a notice in writing to the other Party, if any direction or order from any authority in India or any change in applicable statutes, rules and regulations or Government policy is made which prevents or significantly impairs the implementation of this Agreement, or directly or indirectly so restricts the scope and exercise of the right of either Party as concerns the SPV so as to render its objectives effectively impossible.

13.3 Consequences of Termination

- 13.3.1 The termination of this Agreement shall not relieve any Party of any obligation or liability accrued prior to the date of termination.
- 13.3.2 If this Agreement terminates pursuant to Clause 13.2 above, then any Party electing to terminate this Agreement shall, without prejudice to any other rights or remedies it may have, require the Party in default under Clause 13.2 to transfer its Shares to the non-defaulting Party. The price at which such Shares shall be transferred shall be the Fair Price as defined in Clause 13.3.3 below.
- 13.3.3 The auditors shall be instructed by the SPV to certify in writing simultaneously to both Parties the amount which, in their opinion, represents the fair market value (“**Fair Price**”) of the Shares by applying valuation principles generally accepted and currently practiced in India. It is hereby clarified that these valuation principles should, *inter alia*, take into consideration a transaction between a willing buyer and a willing seller who are not rushed to complete a transaction and consequently act under forced sale circumstances. It is further agreed that in so certifying, the auditors shall be considered to be acting as experts and not as arbitrators. The cost of obtaining such certification by the auditors shall be equally borne and paid for by each of the Parties.
- 13.3.4 The Parties shall promptly provide required information and documents in obtaining the requisite Governmental or statutory approvals to implement the provisions of this Clause 13.
- 13.3.5 The Party entitled to or obliged to purchase the Shares may nominate or cause any other Person or party to purchase the Shares.
- 13.3.6 During the term of this Agreement and until the Party entitled or obliged to purchase Shares in accordance with this Clause 13 actually purchases the Shares, the Parties shall each use reasonable efforts to maintain and preserve the Business and the best interest of the SPV.
- 13.3.7 The foregoing shall not limit the ability of either Party to seek legal and equitable remedies related to a material breach by the other Party or the failure of the other Party to perform any other duty or obligation under this Agreement.

13.4 Termination pursuant to a Deadlock

In the event that a Deadlock Matter is not resolved by the Parties within the time period specified in Clause 8.7 above, unless the Parties agree otherwise, NICDIT shall, within 10 (Ten) days of the expiry of the time period referred to in Clause 8.6, notify BIADA in writing that NICDIT intends to purchase all of BIADA's Shares. The price at which such Shares shall be transferred shall be the Fair Price as defined in Clause 13.3.3. Similarly, BIADA may elect to purchase all of the Shares held by NICDIT at a price and upon terms and conditions to be mutually agreed.

14 **CLOSING AND POST CLOSING OBLIGATIONS OF PARTIES**

- 14.1 At the Closing, the Parties shall cause a meeting of the Board to be held to consider and approve, among other matters, the following:
- (a) recording and election of Directors nominated by NICDIT and BIADA in accordance with this Agreement;
 - (b) issuance and allotment to each Party the respective number of Shares subscribed by it and upon such allotment, the Parties shall cause the joint signatories of the share subscription account to release the subscription amount to the SPV.
- 14.2 Upon Closing, BIADA shall ensure that the land procured for the Integrated Manufacturing Cluster Project is transferred to the SPV.
- 14.3 Upon acquisition/ transfer of land to the SPV, the SPV shall be responsible for obtaining all statutory approvals. NICDIT/BIADA will assist and facilitate obtaining

of such approvals required in relation to the Site.

15 CONFIDENTIALITY

15.1 Each of the Parties shall ensure that during the term of this Agreement and for a period of 5 (five) years after termination of the Agreement, keep confidential and cause their respective Affiliates, directors, representatives, employees and agents, as the case may be, to keep confidential any Confidential Information which any such Persons may acquire in relation to the transactions contemplated by this Agreement or in relation to the employees, clients, business or affairs of any other Party and shall not use or disclose such information except with the consent of the other Party. The restrictions in this Clause 15 shall not apply to any information:

- (a) which is at the date of this Agreement publicly available other than through breach of this Agreement by any Party;
- (b) which was known to the Party, as evidenced by its written records, prior to it receiving such Confidential Information;
- (c) which subsequently comes lawfully into the possession of the disclosing Party by a third party which did not require any obligation of confidentiality; or
- (d) which is required to be disclosed in accordance with the requirements of Applicable Laws, any Governmental Authority, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority.

For the purpose of this Clause, “**Confidential Information**” means all the information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by a party to the other party whether before or after the date of this Agreement.

16 FORCE MAJEURE

16.1 If either Party (“**Affected Party**”) is prevented from performing its obligation under this Agreement due to Force Majeure Events, the Affected Party shall be excused for non-performance of its obligation during the period such Force Majeure Event continues to exist, but if such Force Majeure Event continues to exist and prevents performance by the Affected Party of its obligation for more than 12 (twelve) months, the other Party shall have the right to forthwith terminate this Agreement effective upon delivery to the Affected Party of written notice of such termination.

17 NOTICES

17.1 Any notice pursuant to this Agreement shall be in English language and in writing, signed by the Party giving it (or by its duly authorised official) and may be served by sending it by hand delivery, e-mail, facsimile, registered/speed post, or reputed national courier service, addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

If to NICDIT:

Attn: The Chief Executive Officer and Trustee
 Address: National Industrial Corridor Development and Implementation Trust
 8th Floor, Tower-1, LIC Jeevan Bharti Building, 124 Connaught Place, New Delhi-110001
 Fax No.: 011 26118889
 Email: ceo@nicdc.in

If to BIADA:

Attn: [•]
 Address: [•]

Fax no.: [•]
Email: [•]

If to SPV:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

17.2 All notices given in accordance with Clause 17.1 shall be deemed to have been served as follows:

- (a) if delivered by hand, at the time of delivery; when proof of delivery has been obtained; or
- (b) if posted, at the expiration of 10 (ten) days after the envelope containing the same was delivered into the custody of the postal authorities; or
- (c) if communicated by facsimile or e-mail, on receipt of confirmation of successful transmission.

17.3 All notices communicated by facsimile and e-mail shall be followed by a copy thereof being sent by post to the addressee. A notice or other communication received on a day other than a Business Day, or after business hours in the place of receipt, shall be deemed to be given on the next following Business Day in such place.

18 GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION

18.1 This Agreement shall be interpreted in accordance with Indian law.

18.2 In the event any dispute arises between the Parties out of or in connection with this Agreement, including the validity thereof, the Parties hereto shall endeavour to settle such dispute amicably in the first instance. The attempt to bring about an amicable settlement shall be treated as having failed as soon as one of the Parties hereto, after reasonable attempts, which shall continue for not less than 90 (ninety) days, gives a notice to this effect, to the other Party in writing.

18.3 In case of such failure, the dispute shall be referred to a sole arbitrator, who shall be mutually appointed by the Parties. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as amended from time to time, and the seat of arbitration shall be Patna, India. The language of arbitration shall be English.

18.4 Subject to the provisions of Clause 18.3 above, the courts at Patna shall have exclusive jurisdiction over all matters arising out of or in connection with this Agreement.

19 CAPTIONS

19.1 The captions and titles in this Agreement are for the convenience of reference only and shall not be deemed to define or limit any of the terms, conditions, or provisions of this Agreement.

20 BINDING EFFECT AND INVALIDITY

20.1 All terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives and assigns of the Parties.

20.2 The Parties agree that if any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. Notwithstanding the foregoing, the Parties to this Agreement shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.

21 ENTIRE AGREEMENT

- 21.1 This Agreement sets forth the entire agreement and understanding between the Parties in connection with the subject matter hereof and no Party has relied on any representation of any other save for any representation expressly set out herein. This Agreement supersedes any previous agreements between the Parties whether oral or in writing regarding the subject matter hereof.

22 COSTS

- 22.1 Each Party shall pay its own expenses, costs and attorneys fees in negotiating, preparing and executing this Agreement. Once this Agreement is executed, all expenses incurred by the Parties in performing their obligations in establishing the SPV shall be reimbursed by the SPV.

23 INDEPENDENT CONTRACTORS

- 23.1 Each Party hereto is an independent contractor and nothing contained in this Agreement shall be construed to be inconsistent with this relationship or status. Neither Party owes a fiduciary duty to the other. Nothing in this Agreement shall be in any way construed to constitute either Party as the agent, employee or representative of the other. As an independent contractor, each Party has relied on its own expertise or the expertise of its legal, financial, technical or other advisors.
- 23.2 The SPV shall be an independent company from both Parties and shall not be construed to be an agent or representative of the Parties. Neither NICDIT nor BIADA shall take any action on behalf of or binding upon the SPV, except as may be specifically provided for in this Agreement or as may be specifically consented to in writing by the SPV. The SPV shall not be authorised to take any action on behalf of or binding on either Party without such Party's specific consent in writing.

24 ASSUMPTION OF RISK

- 24.1 Each Party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) is assumption of such risks and uncertainty. Each Party has conducted its own due diligence and requested and reviewed business plans, financial documents and other written material as in such Party's opinion shall be the basis of that Party's decision to enter into this Agreement.

25 RELIANCE

- 25.1 Each Party has consulted such legal, financial, technical or other expert it deems necessary or desirable before entering into this Agreement. Each Party represents and warrants that it has read, knows, understands and agrees with the terms and conditions of this Agreement. All discussions, estimates or projections developed by a Party during the course of negotiating the terms and conditions of this Agreement are by way of illustration only, and unless specifically contained in this Agreement or one of its Schedules, are not binding or enforceable against other Party in law or in equity.
- 25.2 Each Party agrees and acknowledges that in entering into this Agreement it is not relying on any representation, warranty or statement made by or on behalf of the other Party, whether orally or in writing, unless the same is expressly set out herein.

26 INDEMNITY

- 26.1 If, for any reason or resulting from any cause whatsoever, any statement, representation or warranty set forth herein is found to have been materially incorrect, untrue when made, in breach or fails to prove to be true, and if any debt, liability or other obligation of any kind is found to exist, the Party making such representation or warranty shall be fully liable to the other Party for any and all liability, damage, costs and expenses, including attorney fees, arising from such misrepresentation, breach or incorrect statement.

- 26.2 The SPV shall not incur any liability on behalf of either Party and shall not hold itself out as having any authority to bind either Party in any way. Creditors of the SPV shall have recourse only to the assets of the SPV, and the SPV shall ensure that no creditor is led to believe otherwise or in any way to seek repayment from either of the Parties. Notwithstanding the SPV's limited liability, and without Clause 26.2 expanding such liability, if for any reason any third person brings a claim against either or both of the Parties based on the Party being a joint venture partner and arising out of the operation of the SPV or if otherwise either of the Parties incurs any liability for any action or omission taken pursuant to this Agreement or in its role as a Shareholder in the SPV other than from willful wrongful conduct, the SPV shall be responsible for and shall indemnify, hold harmless and defend either Party if either Party incurs any liability, loss or damage, including attorney costs, as a result of its being a Party to this Agreement or for being a Shareholder, if such liability, loss or damage arises from a claim brought by person other than the other Party.
- 26.3 Neither Party shall be liable to the other Party for any consequential, indirect, exemplary, incidental, special or punitive damages based on any claim arising out of this Agreement. Neither Party's aggregate liability under this Agreement shall exceed such Party's contribution to the registered capital of the SPV.
- 27 MUTUAL CONSULTATION AND GOODWILL**
- 27.1 The Parties confirm their intention to promote the best interests of the SPV and to consult fully on all matters materially affecting the development of the Business of the SPV. Each Party shall act in good faith towards the other Party in order to promote the success of the SPV.
- 28 ASSIGNMENT**
- 28.1 The benefits of this Agreement shall run to, and the obligations of this Agreement shall be binding upon, the Parties and their respective successors and assigns. Unless otherwise provided herein, neither Party may assign or delegate this Agreement or any of its rights or duties under this Agreement without the prior written consent of the other Party.
- 29 WAIVER OF RIGHTS**
- 29.1 No waiver by a Party of a failure, or failure by any other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a like or different character.
- 30 AMENDMENTS**
- 30.1 This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each Party to this Agreement.
- 31 COUNTERPARTS**
- 31.1 This Agreement may be entered into in one or more counterparts each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE HEREIN ABOVE FIRSTMENTIONED.

<p>FOR National Industrial Corridor Development and Implementation Trust</p> <p>_____ Authorized Signatory Name: _____ Title: Chief Executive Officer & Trustee</p>	<p>FOR Bihar Industrial Area Development Authority</p> <p>_____ Authorized Signatory Name: _____ Title: _____</p>
--	--

Witnesses:

<p>1. _____</p> <p>Name: Address:</p>	<p>2. _____</p> <p>Name: Address:</p>
---	---

Annexure A**Functions and responsibilities of The Parties****Part A: Functions and responsibilities of the SPV**

(a) Undertake the development of the Integrated Manufacturing Cluster Trunk Infrastructure and Strategic Projects in accordance with the terms of this Agreement, Applicable laws and Applicable Permits. Acquire land parcels on leasehold/free hold basis or procure the acquisition of land parcels through relevant GoB agencies, for the purposes of the Project.

(b) Ensure the preparation by NICDC of the Master Plan, and Development Plan and other related technical reports for the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects.

(c) Regulate and enforce the Master Plan, Development Plan, zonal plans and other detailed planning and development control guidelines, building byelaws in respect of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects.

(d) Identify and appoint contractors, consultants, architects, town planners, manage and regulate the performance of functions by such contractors with the help of NICDC.

(e) Determine, demand and collect appropriate Fee from Users and take appropriate punitive measure if the Fee due in respect of any Urban Service is not paid by any User.

(f) Make the rules, regulations and procedures for the development, operation and use, regulation and management of the Integrated Manufacturing Cluster and enforce such rules, regulations and procedures.

(g) To approve amendment of the Master Plan/Development Plans on being declared as the Planning Authority and perform functions of the Planning Authority under the BIADA Act and any other Applicable Laws.

Part B: Functions and responsibilities of BIADA

(a) BIADA shall take all necessary steps to acquire the Project Land and transfer/lease Project Land to the SPV. Further, in case the Project Land has already been acquired by BIADA, it shall facilitate transfer/lease of Project Land to the SPV..

(b) BIADA shall ensure that the SPV is notified and/or designated to undertake all the functions to be carried out by the Planning Authority under the BIADA Act and other Applicable Law, in respect of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and approve, where required under Applicable Law, the Master Plan or Development Plan, and take all such actions as may be required to make such Master Plan and Development Plan valid and effective for purposes of the Applicable Law. BIADA shall not make any modifications and/or amendments to the recommendations made by the SPV, including with respect to the Master Plan or Development Plan, except with the prior written approval of NICDIT.

(c) BIADA shall facilitate in the procurement of all statutory approvals from the relevant Governmental Authority and shall, where relevant, acquire such Applicable Permits and approvals in its own name and assign the same to the SPV or nominate the SPV as the appropriate agency for implementation of the same.

(d) BIADA shall facilitate the creation and provision of all infrastructure required for accessing the Site.

(e) BIADA shall market the Integrated Manufacturing Cluster Project nationally and internationally and if required to mobilise financial resources from the private sector/market, bilateral and multilateral agencies on behalf of the SPV for the Integrated Manufacturing Cluster Project.

(f) BIADA shall contribute towards requisite technical, financial and managerial resources and other manpower available, by itself or through consultants, to undertake Integrated Manufacturing Cluster Project, identification and development, programme management, proposal preparation and promotion of industrial development.

(g) BIADA shall ensure that the SPV continues to exercise the powers and functions delegated to it and the Planning Authority under the provisions of BIADA Act in relation to the Industrial Township Project during the term of this Agreement.

Part C: Functions and responsibilities of NICDIT

(a) To appraise and review project proposals put up by NICDC for financial assistance from the Government of India.

(b) To get the Trunk Infrastructure and Strategic Projects implemented by NICDC.

(c) To market the Integrated Manufacturing Cluster Project nationally and internationally and if required to mobilise financial resources from the private sector/market, bilateral and multilateral agencies on behalf of the SPV for the Integrated Manufacturing Cluster Project.

(d) To review, consider and approve/reject amendment of the Master Plan/Development Plans.

(e) To contribute towards requisite technical, financial and managerial resources and other manpower available, mainly through hiring consultants, to undertake project identification and development, programme management, proposal preparation and promotion of industrial development.

(f) To obtain viability gap support from the GoB and the GoI.

SCHEDULE - A

(See Clause 4.1)

**SITE OF THE INDUSTRIAL TOWNSHIP PROJECTS, TRUNK
INFRASTRUCTURE AND STRATEGIC PROJECTS****1 The Site**

1.1 The Site shall comprise the area as described in **Annex-I** of this **Schedule A** and shall include the land, buildings, structures and road works thereon.

1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared by the SPV.

Annex-I

(Schedule-A)

**Site for the Integrated Manufacturing Cluster Projects, Trunk Infrastructure
and Strategic Projects**

[**Note:** Through suitable maps, drawings and description in words, the site location, coordinates, plot numbers, the Site shall be specified briefly but precisely in this Annex-I. Also an inventory of the buildings, structures and road works existing on the site shall be identified herein.]

SCHEDULE-B

(See Clause 2.2.1)

**DEVELOPMENT OF THE INDUSTRIAL TOWNSHIP, TRUNK
INFRASTRUCTURE AND STRATEGIC PROJECTS**

1. Development of the Integrated Manufacturing Cluster
Development of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall include construction of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects as described in this **Schedule-B** and in **Schedule-C**.
2. Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects
 - 2.1 Development of Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall include construction of the township in accordance with the Master Plan and shall include the Project Facilities.
 - 2.2 The Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects shall be constructed by the SPV in conformity with the specifications and standards set forth in **Schedule-D**.
3. Facilities Development
 - 3.1 Facilities Development shall be undertaken in accordance with and subject to the terms and conditions contained in the Master Plan and in this Agreement.
 - 3.2 Facilities Development shall be undertaken and completed by the SPV in conformity with the specifications and standards set forth in **Schedule-D**.

SCHEDULE-C

(See Clause 2.2.1)

PROJECT FACILITIES

(List Trunk Infrastructure and other facilities, such as airport, railways, water, sewage, etc., in broad terms)

Project Facilities for Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects

The SPV shall construct the Project Facilities in accordance with the provisions of this Agreement. Project Facilities forming part of the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects and shall include the following.

[To include a list of Trunk Infrastructure such as main and arterial roads, water treatment and supply, electricity, distribution, residential, commercial and industrial zones etc.]

SCHEDULE -D

(See Clause 2.2.1)

SPECIFICATIONS AND STANDARDS

1. The SPV shall comply with the specifications and standards set forth in the Master Plan, Development Plan, and other detailed planning and development control guidelines, as revised from time to time, for construction of the Integrated Manufacturing Cluster Projects, Trunk Infrastructure and Strategic Projects.
2. Facilities Development shall be undertaken in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India, UK or USA, as the case may be.

SCHEDULE- E

(See Clause 3.2.2)

**DETAILS OF EXISTING AND ONGOING INDUSTRIAL CLUSTERS / PARKS/
PROJECTS AND LAND ALLOTMENTS ALREADY MADE TO ANY SPECIFIC
INDUSTRY****[To be inserted-State Government to provide the list].****SCHEDULE - F**

(See Clause 4.2.1)

Lease Agreement**LEASE AGREEMENT/DEED**

This Agreement for Lease of land ("**Lease Agreement**") is made and executed on this ----- day of ----- 2021, by and between:

(i) **Bihar Industrial Area Development Authority**, an authority constituted under Section 3 of the Bihar Industrial Area Development Act, 1974 having its administrative office at 1st floor, Udyog Bhawan, East Gandhi Maidan, Patna, Bihar 800004 India (hereinafter referred to as "**BIADA**" or "Lessor" which expression shall, unless repugnant to the context or meaning there of be deemed to mean and include its successors) of the First Part;

AND

(ii) ----- a company incorporated under the provisions of the statute in vogue and having its registered office at -----, India represented through its authorized representative, Chief Executive Officer/ any other officer nominated by it (here in after referred to as the "Lessee", which expression shall unless repugnant to the subject or context mean and include its successors and permitted assigns) of the second part.

The Lessor and Lessee are here in under collectively referred to as a "Parties" and individual as "Party".

WHEREAS

- A. The Lessor is an authority constituted under the provisions of the Bihar Industrial Area Development Authority Act, 1974 and is designated as the State Level Nodal Agency for the Bihar to co-ordinate and facilitate the activities of ----- with Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry GOI and -----
- B. [**BIADA**] and NICDIT have entered into a shareholder agreement dated ----- ("Shareholders Agreement") for the purpose of development of an Industrial Manufacturing Cluster at the site in the Gamhariya, Block-Dobhi, Gaya, Bihar as an industrial city under the IMC.
- C. Lessee is a special purpose company incorporated by **BIADA** and the NICDIT pursuant to the Shareholders Agreement established with the objective of construction, development and operation and maintenance of the Industrial Manufacturing Cluster.
- D. The Shareholders Agreement requires **BIADA** to transfer the leasehold rights, title and interest in the Site to the Lessee in accordance with the terms stated therein. The lessor owns and is in possession of, the land constituting the Site, as delineated and set out in Annexure A here to;
- E. Pursuant to the provisions of the Shareholders Agreement the Lessor now desires to lease the site to the lessee and the lessee desires to take on lease from the Lessor, the Site for the purpose of undertaking the Project as specified in the shareholders Agreement.

NOW THEREFOREIN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREIN AFTER THE PARTIES HERE TO AGREE AS FOLLOWS

1. GRANT OF LEASE AND POSSESSION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Lease Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Agreement and not defined herein but defined in the shareholders' agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Shareholders Agreement.

- (a) **"Applicable Laws"** means all laws, brought into force and effect by GOL or Government of Bihar including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record or any other judicial, quasi-judicial or administrative body applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the parties here under, as may be in force and effect during tile subsistence of this Agreement;
- (b) **"Lease Rent"** shall have the meaning set forth in Clause 4 of this Lease Agreement
- (c) **"Site"** shall have the meaning set forth in Recital B of this Lease Agreement; and
- (d) **"Term"** shall have the meaning set forth in Clause 3 of this Lease Agreement.

1.2 Interpretations

In this Lease Agreement, except to the extent that the context requires otherwise:

- (a) The Annexure to this Lease Agreement forms part of this Lease Agreement and will be of full force and effect as though it is expressly set out in the body of this Lease Agreement;
- (b) The terms of this Lease Agreement should be read in consonance with and not in derogation with the terms of Shareholders Agreement; and
- (c) The terms and conditions of the shareholders Agreements shall be deemed to have been incorporated herein by reference and shall continue to be construed as a part of this lease Agreement even subsequent to termination of the shareholders Agreement. A copy of the executed Shareholders Agreement is annexed here to as Annexure "B".

2. GRANT OF LEASE AND POSSESSION

2.1 In consideration of the covenants contained in the shareholders Agreement, this Lease Agreement and payment of the Lease Rent, the Lessor grants leasehold rights ("**Lease**") in respect of the site, to the Lessee and the lessee agrees to accept the Lease from the Lessor, for the duration of the Term together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages what so ever in or appurtenant to the Site or any part thereof , and to hold, possess, use and enjoy the Site and or any part thereof, in accordance with the provisions of this Lease Agreement, subject always, however, to the terms and conditions contained in the shareholders Agreement. The parties agree that the possession of the site shall be handed over to the Lessee in accordance with the provisions of the Shareholders Agreement,

2.2 Subject to and in accordance with the terms of this Lease Agreement and those set out in the Shareholders Agreement, the Lessee shall have the right and be at liberty to construct, erect, renovate, repair, alter, or otherwise deal with the Site and any structure or structures standing thereon or to be constructed hereafter and the works carried out there in and shall carry out any modifications there to as it. deems fit in

accordance with the applicable laws.

3. **TERM**

The Lease granted pursuant there to shall be for a period of ----- years commencing from the date of this agreement and shall be renewed in the manner specified here under ("Term").

The Lessee shall be entitled, by issuing a written notice to the Lessor, no later than [year] prior to the expiry of the original -----, Upon the expiry of each term of ----- the Lessee shall be entitled to seek further renewal of the lease for a period of [actual term] in accordance with the provision here of:

4. **Lease Rent**

4.1 Upon execution of this Lease Agreement and in consideration of Lessor leasing the Site to the Lessee and granting the rights, privileges and benefits set forth in this Lease Agreement, the Lessee has agreed to issue----- Shares to the Lessor towards the consideration for the lease of the Site ("Lease Rent").

4.2 The Lessor acknowledges and confirms the issuance of ----- Shares by the Lessee, in accordance with the terms of the Shareholders Agreement for the avoidance of doubt, issuance of Shares to the Lessee" shall constitute a full and final settlement of all claims of the, Lessor with respect to Lease Rent for the Term or any extension thereof and the Lessor any Affiliate there of shall not have any further right of claim under any law, contract or otherwise with respect to the Lease Rent.

5. **USE OF SITE**

During the Term of the Lease, the Lessee agrees to use the Site for carrying out its obligations under the Shareholders Agreement and for no other purpose.

6. **LESSOR'S OBLIGATIONS AND COVENANTS**

The Lessor hereby agrees and warrants that:

- (a) It has good and valid title to the Site and has the requisite power and authority to grant the Lease;
- (b) Subject to the terms of the Lease Agreement and the Shareholders Agreement, the Lessee shall be entitled to possess, hold use and enjoy the Site and every part thereof during the Term of the Lease Agreement, without any interruption by the Lessor except as per the provisions of the shareholders Agreement;
- (c) The Lessee shall, during the Term of the Lease Agreement, enjoy free ingress and egress to and from the Site without any hindrance;
- (d) The Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession for the site in accordance with the terms of the shareholders Agreement;
- (e) subject to the terms of the Shareholders Agreements, the Lessee shall be entitled to sublease, license, grant concession or create any other Encumbrance or rights in the Site or any part thereof, in favour of any third party and
- (f) it shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the site relating to the period up to the commencement of the Lease Agreement. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Site shall be borne by the Lessee from the commencement of the Lease Agreement and during the Term.

7. **LESSEE'S OBLIGATIONS AND COVENANTS**

Lessee here by covenants, agrees and represents that:

- (a) Upon execution of this Lease Agreement and subject to the terms thereof, the Lessee shall accept the Site on "as is where is basis" and in the condition it is handed over and undertakes to use the same only for the purpose specified in the shareholders Agreements;
- (b) It shall use the Site only for the purpose of carrying out its obligations under the Shareholders Agreement in accordance with the terms of the Shareholders Agreement and Applicable Laws;
- (c) It shall obtain or cause to be obtained and shall maintain throughout the Term all regulatory approvals, clearances, permits and consents, including any and all environmental approvals, clearances, permits or consents, that may be required in order for the Lessee to undertake the project in accordance with the terms of the Shareholders Agreement; and
- (d) The Lessee shall pay and discharge all property taxes, land revenues, other taxes, service tax, assessments, levies, cesses and other payments/dues in respect of the Site relating to the period from the commencement of the Lease Agreement and during the Term hereof.

8. **STAMP DUTY AND REGISTRATION CHARGES**

Subject to the exemption or waiver, if any, granted by the Government of Bihar or any other authority. The parties agree that all stamp duties and registration charges payable in respect of the Lease contemplated here in shall be payable by the Lessee.

9. **NOTICES**

- 9.1 Any notice pursuant to this Agreement shall be in writing signed by (or by some Person duly authorized by) the person giving it and may be served by sending it by facsimile, prepaid recorded delivery or registered post addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

If to Lessor

Managing Director
Bihar Industrial Area Development Authority
East Gandhi Maidan
Patna
Bihar- 800004

If to Lessee

- 9.2 All notices given in accordance with Clause 9.1 shall be in the English language and shall be considered to have been given at the time when actually delivered if delivered by hand, or upon the next working day following sending by facsimile or in any other event within ----- days after it was mailed in the manner here in before provided.

10. **GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION**

In the event of any dispute or difference between the parties arising out of or in connection with this Agreement, including the validity thereof, the parties hereto shall endeavour to settle such dispute amicably at the first instance. The attempt to bring about an amicable settlement shall be treated as having failed as soon as one of the parties hereto, after reasonable attempts, which shall continue for not less than 180 (One hundred and Eighty) days, gives a notice to this effect to the other party in writing.

- 10.2 Any dispute, difference or controversy of whatever nature howsoever arising out of or in connection with or in relation to this Agreement which is not resolved amicably within

- 180 (One Eighty days) of receipt of notice of such dispute shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act 1996 (as amended up to date).
- 10.3 The Parties submit to the jurisdiction of the Courts of Delhi.
- 10.4 This Agreement shall be interpreted in accordance with Indian law.
11. **BINDING EFFECT AND INVALIDITY**
- 11.1 All terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives and assigns of the Parties.
- 11.2 The Parties agree that if any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
Notwithstanding the foregoing, the Parties to this Agreement shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.
12. **INDEMNITY**
- 12.1 If, for any reason or resulting from any cause whatever, any statement, covenant or representation set forth herein is found to have been materially incorrect, untrue when made, in breach or fails to prove to be true; and if any debt, liability or other obligation of any kind is found to exist, the party making such representation or warranty shall be fully liable to indemnify to the other Party for any and all liability, damage, costs and expenses, including attorney fees, arising from such misrepresentation, breach or incorrect statement.
- 12.2 Neither Party shall be liable to the other party for any consequential, indirect, incidental, special or punitive damages based on any claim arising out of this Agreement.
13. **WAIVER OF RIGHTS**
No waiver by a party of a failure or failure by any other party to this Agreement to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a like or different character.
14. **AMENDMENTS**
This Agreement may be amended only by an instrument in writing signed by duly authorized representatives of each party to this agreement.
15. **COUNTERPARTS**
This Agreement may be entered into in two counterparts each of which, executed and delivered, shall be in an original, but all the counterparts shall together constitute one and the same instrument.
- IN WITNESS WHERE OF THE PARTIES HAVE EXECUTED AND DELIVERED THIS LEASE AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**
SIGNED, SEALED AND SIGNED, SEALED AND DELIVERED DELIVERED
- | | |
|---------------------------------|---------------------------------|
| For and on behalf of THE LESSOR | For and on behalf of THE LESSEE |
| Signature | Signature |
| Designation | Designation |
| In the presence of : | In the presence of : |
- ANNEXURE A**
(NOTE: Details of the Site)

SCHEDULE - G

(See Clause 8.4)

Affirmative Vote Items

- a) to change the number of the Directors of the SPV;
- b) to change the capital structure of the SPV, including:
 - (i) sale or issuance by SPV of Shares, any preference, equity, sweat equity or preference linked, convertible or exchangeable security, any bonds or debentures by whatever name called, in INR or foreign currency, or any options, warrants or other rights to purchase or obtain (upon conversion, exchange, exercise or otherwise) any of the foregoing;
 - (ii) redemption, repurchase or buyback by SPV of any Shares or other securities;
 - (iii) any recapitalization by SPV (whether by share exchange, merger, consolidation or otherwise);
- c) the sale of SPV or any subsidiary or joint venture of SPV or any consolidation, merger, demerger or amalgamation of SPV /subsidiary /joint venture with any other company or to authorise amendment or termination of any joint venture, partnership, affiliation, consortium or similar arrangement;
- d) to declare and pay any dividend or other distribution on account of Shares in SPV's capital or any drawdown of any reserves of SPV;
- e) to commence any new line(s) of business or change in the existing business structure or cessation of any business;
- f) to approve the annual budget, business plan, capital expenditure and investment of funds of the SPV and any variation to the aforementioned, every financial year;
- g) to borrow any amounts in excess of Rs. 50 Crore (Rupees fifty crore) in aggregate, other than as approved in the annual budget;
- h) to carry out any amendments to the Master Plan and/or the Development Plans;
- i) appointment of an EPC contractor for the purpose of any project being undertaken by the SPV for any works aggregating to more than Rs. 250 Crore (Rupees two hundred fifty crore);
- j) to undertake bid process management, approve any tender and enter into contract or arrangements involving expenditure on capital account or realization of capital assets, if amount or aggregate exceeds thereof, exceeds the limit of Rs. 100 Crore (Rupees one hundred fifty crore) in anyone year or in relation to anyone project;
- k) to change the floor space index, or to change the land use within the Industrial Township;
- l) to approve any allotment of land exceeding 50 (fifty) acres, in a single or a series of transactions;
- m) to incorporate a new subsidiary, undertaking or the acquisition of any share capital or other securities of a body corporate;
- n) to present any petition or adoption of any resolution relating to liquidation, suspension of payments or the winding-up or dissolution of SPV, including an application to a Court for winding up of the SPV and any other matters pertaining to the winding up of the company;
- o) any action that reclassifies any outstanding shares into shares having preference or priority as to dividends or assets to the securities issued by the SPV;
- p) registration/ approval of transfer of securities of the SPV and creation of or taking on record any charge or encumbrance on securities, except as specifically provided in this Agreement;
- q) make payments which are not of routine nature and not in the ordinary course of business;

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- r) disclose to any other party or Person any secret or Confidential Information relating to the SPV; and
 - s) any related party transactions;
 - t) write down or write up (or fail to write down or write up in accordance with Applicable Law) the value of any current assets or revalue any assets of the SPV other than in the ordinary course of business consistent with past practice and/ or in accordance with Applicable Law;
 - u) amendments to any contract entered into by the SPV, or entering into any new contracts, amend, terminate, cancel or compromise any claims in respect of the business or waive any other rights of substantial value in respect of the business;
 - v) any change of financial year, accounting year or accounting policies; or appointment or change in the SPV's auditors, statutory and/ or internal;
 - w) any action resulting in, creating or changing off-balance sheet liability structure, such as, leasing, encumbrances, transfer, pledge or creation of lien or voluntarily permit or allow any of the assets or properties (whether tangible or intangible) of the SPV to be subjected to any encumbrance, other than the encumbrances created and subsisting as of the date hereof;
 - x) appointment/ removal of any employee/ managerial personnel, except as specifically agreed in this Agreement;
 - y) make any new capital expenditures or commitment for any capital expenditure or make any purchases requiring expenditures exceeding Rs. 1 (one) crore; and
 - z) any commitments to do any of the foregoing.

एनक्सर-II

STATE SUPPORT AGREEMENT

By and Amongst

The Governor of the State of Bihar

And

National Industrial Corridor Development and Implementation Trust

And

Bihar Industrial Area Development Authority

STATE SUPPORT AGREEMENT

This state support agreement is executed on this ____ day of _____, 2021, by and amongst:

1. **The Governor of the State of Bihar**, through [Additional Chief Secretary/ Principal Secretary/Secretary, Department of Industries], Government of Bihar, having its office at [●] (hereinafter referred to as “**State Government**” or “**GoB**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors) of the **First Part**; and
2. **National Industrial Corridor Development and Implementation Trust**, a trust, having its registered office at 8th Floor, Tower-1, LIC Jeevan Bharti Building, 124 Connaught Place, New Delhi-110001, acting on behalf of Government of India, through its [Trustee and Chief Executive Officer, _____], (hereinafter referred to as “**GoI Agency**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the **Second Part**; and
3. **Bihar Industrial Area Development Authority**, a statutory body, duly constituted under the provisions of the Bihar Industrial Area Development Act, 1974, having its head office at [1st floor, Udyog Bhawan, East Gandhi Maidan, Patna, Bihar-800004, India], through [● **insert name**], [● **insert designation**] (hereinafter referred to as “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the **Third Part**.

(State Government, GoI Agency and Authority are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.)

WHEREAS:

- A. The GoI (as defined herein below) intends to develop smart industrial cities and industrial clusters/parks along with associated infrastructure for logistics and connectivity within the Amritsar Kolkata Industrial Corridor (“**AKIC**”) region on either side of the 1,839 km long Eastern Dedicated Freight Corridor traversing seven states, viz., Punjab, Haryana, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand and West Bengal, by way of partnership with the respective State Governments. The Union Cabinet has approved development of AKIC Project (as defined herein below) at the Eastern Dedicated Freight Corridor on 20th January 2014 and on 8th December, 2016.
- B. The GoI has envisaged the development of AKIC Project including Integrated Manufacturing Cluster (as defined herein below) to NICDC (as defined herein below) and the channelizing of financial assistance for the same through GoI Agency.
- C. The State Government/Authority has identified the area at Gamhariya, Block-Dobhi, District-Gaya measuring [●] acres (collectively, the “**Proposed Industrial Area**”) to be an integrated manufacturing cluster and will be notifying the same to be an industrial township under Article 243Q of the Constitution of India, and other provisions analogous to the same.

- D. For development of the Site (as defined herein below) into the Integrated Manufacturing Cluster in the state of Bihar as envisaged under the AKIC Project, the GoI/GoI Agency and the State Government/Authority have decided to take up the development of the Integrated Manufacturing Cluster at Proposed Industrial Area through the SPV (as defined herein below) on the terms and conditions as set forth in the Shareholders Agreement (as defined herein below).
- E. Pursuant to Recital 'D' above, GoI Agency and Authority have agreed to promote and incorporate the SPV as a limited liability company for undertaking, *inter alia*, the design, engineering, financing, procurement, construction, operation and maintenance of the Integrated Manufacturing Cluster and to fulfil its other obligations as set out in the Shareholders Agreement.
- F. The State Government recognizes that implementation of the Integrated Manufacturing Cluster Project (as defined herein below) and its continued operation and maintenance under and in accordance with the Shareholders Agreement is necessary and required for the economic growth and development of the State (as defined herein below) in general, and development of infrastructure in the State in particular, and acknowledges that to enable the implementation of the said Integrated Manufacturing Cluster Project, including to facilitate its financing and its operation and maintenance, it is necessary for the State Government to agree and undertake to support and extend complete cooperation to the SPV, GoI Agency and Authority with respect to implementation of the Integrated Manufacturing Cluster Project.
- G. The State Government, GoI Agency and Authority agree and acknowledge that the successful implementation of the Integrated Manufacturing Cluster Project, including performance of obligations by the SPV under and in accordance with the Shareholders Agreement, requires extensive continued support and grant of certain rights and authorities as hereinafter set forth, by State Government and is an essential pre-condition for mobilization of resources thereof by the SPV.
- H. The Parties therefore consider it necessary and expedient to enter into this Agreement (as defined herein below).

1. Definitions and Interpretations

- 1.1 In this Agreement the following terms shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this state support agreement and all annexures, schedules and appendices hereto, as amended or modified from time to time, in accordance with the terms hereof;

“**AKIC Project**” means the Amritsar Kolkata Industrial Corridor project approved by the Union Cabinet on 20th January, 2014, and on 8th December, 2016 for development of industrial nodes/township, integrated manufacturing clusters and related infrastructure at Eastern Dedicated Freight Corridor traversing seven states viz. Punjab, Haryana, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand and West Bengal, to rapidly enhance India's competitiveness in manufacturing;

“**Applicable Laws**” mean all laws, brought into force and effect by GoI or State Government, including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Integrated Manufacturing Cluster, Trunk Infrastructure and

Strategic Projects during the subsistence of this Agreement;

“**BIADA Act**” means the Bihar Industrial Area Development Authority Act, 1974;

“**Competing Projects**” means any business or development, construction and/or operation of industrial parks/clusters/townships/projects, commercial, industrial or residential complexes, or other projects, which could directly or indirectly compete with the public private partnership (PPP) projects at the Integrated Manufacturing Cluster, the Strategic Projects and the Facilities Development;

“**Development Plan**” has the meaning ascribed to such term in the Shareholders Agreement;

“**Electricity Regulatory Commission**” shall mean the concerned state electricity regulatory commission having the powers under the provisions of the Electricity Act, 2003;

“**GoI**” means the Government of India;

“**Government Agency**” means any department, body, authority, commission, instrumentality, agency, Municipality, Panchayat or other local authority or any statutory body or authority under the control of GoB or which is subject to supervision, direction or control of GoB in respect of any matter or which can be suspended, superseded or dissolved by GoB;

“**Integrated Manufacturing Cluster**” means the integrated manufacturing cluster to be developed in accordance with the provisions of the Shareholders Agreement and this Agreement, at the Site, set forth in Schedule A, in Gamhariya, Block-Dobhi District-Gaya, comprised within the Proposed Industrial Area, as an industrial cluster within the AKIC Project, and notified or to be notified as such by the Governor of the State of Bihar under the Proviso to Article 243Q of the Constitution of India and/or provisions analogous to the same, with due autonomy and functional freedom to the SPV to develop, implement, dispose land, govern the Site and manage the Urban Services;

“**Integrated Manufacturing Cluster Project**” means the development of the Integrated Manufacturing Cluster to be undertaken by the SPV in accordance with the Shareholders Agreement and this Agreement;

“**Joint Co-ordination Committee**” has the meaning ascribed to such term in Clause 3.8 of this Agreement;

“**Local Taxes**” mean and include any state, municipal or local authority taxes, GST, duties, levies, cess, fee or octroi or any import or surcharge of like nature by whatever name called, applicable on the whole or any part of the transactions to be entered into by or on behalf of the SPV or any person identified by it, in the course of the development of the Integrated Manufacturing Cluster or on the whole or any part of the Integrated Manufacturing cluster Project;

“**Master Plan**” has the meaning ascribed to such term in the Shareholders Agreement;

“**Municipality**” has the meaning ascribed to such term in Article 243P of the Constitution of India;

“**NICDC**” means the National Industrial Corridor Development Corporation Limited, a company incorporated under the Companies Act, 1956, having its registered office at 8th Floor, Tower-1, LIC Jeevan Bharti Building, 124 Connaught Place, New Delhi-110001, set up by GoI pursuant to Union Cabinet approval, whose functions include but are not limited to, acting as the project development partner and knowledge partner to industrial township and integrated manufacturing clusters

constituting the AKIC Project or their developers, promoters including the SPV, project specific companies or special purpose vehicles or other persons, that may be involved in the actual implementation of Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects;

“**Panchayat**” has the meaning ascribed to such term in Article 243(d) of the Constitution of India;

“**Proposed Industrial Area**” has the meaning as assigned to it in Recital C of this Agreement;

“**Reserved Activities**” has the meaning ascribed to such term in Clause 3.7(i) of this Agreement;

“**Shareholders Agreement**” means the shareholders agreement executed on or around the date hereof by and between GoI Agency and Authority for, *inter alia*, the implementation of the Integrated Manufacturing Cluster Project as more specifically described therein and shall include all annexures, schedules and appendices thereto, and any amendments made to the shareholders agreement in accordance with the provisions contained therein;

“**Site**” has the meaning ascribed to such term in the Shareholders Agreement;

“**SPV**” means the public company limited by shares, to be incorporated under the provisions of Companies Act, 2013, in accordance with the provisions of Clause 3.1 of the Shareholders Agreement;

“**State**” means the State of Bihar;

“**State Support**” means the obligations assumed and the facilities agreed to be provided by State Government to the SPV hereunder or pursuant hereto;

“**Strategic Projects**” means the diverse infrastructure and other projects for provision of services primarily, but not exclusively, for the Integrated Manufacturing Cluster or other integrated manufacturing cluster/industrial townships forming part of the AKIC Project, intended to be developed or promoted by NICDC, whether through the SPV or otherwise, to achieve early development of and induce growth within the integrated manufacturing cluster forming part of the AKIC Project. These Strategic Projects may not necessarily be located within any of the integrated manufacturing cluster/ industrial townships forming part of the AKIC Project and may include, but not be limited to, projects related to power generation, transmission and distribution, water treatment and supply, waste management, sewage treatment, transportation, logistics parks, trade, commerce, finance and entertainment complexes, exhibition cum convention centres and other Trunk Infrastructure and shall, where the context so requires, refer to such of the Strategic Projects as being projects to be implemented either by the SPV or any other separate company(s) as agreed upon;

“**Trunk Infrastructure**” means the diverse infrastructure and other projects for provision of services primarily, but not exclusively, for the Integrated Manufacturing Cluster, that is not capable of commercialisation or is not amenable to development under the public private partnership (PPP) model and therefore, is intended to be developed or promoted by the SPV. The Trunk Infrastructure may not necessarily be located within the Integrated Manufacturing Cluster; and

“**Urban Services**” means all urban services to be provided or discharged by the SPV including construction, operation and maintenance of roads, transportation, water supply and sanitation, public health, engineering, power supply, street lighting, city gas supply, environmental management, building sanctions and development control, any other services by whatever name called, akin to municipal services, within or in relation to the Integrated Manufacturing Cluster.

- 1.2 The words and expressions beginning with or in capital letters used in this Agreement shall have the meaning respectively assigned to them herein. The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Shareholders Agreement shall, unless repugnant to the context, have the meaning respectively assigned to them in the Shareholders Agreement.
- 1.3 In this Agreement unless the context otherwise requires:
- (i) any reference to any statute or any statutory provision shall include any amendment or re-enactment or consolidation thereof;
 - (ii) the words importing singular shall include plural and vice versa, and reference to a “person” and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity) and shall include Government Agencies;
 - (iii) the headings are for convenience or reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
 - (iv) the words “include” and “including” are to be construed without limitation;
 - (v) any reference to a “day” shall mean reference to a calendar day, and any reference to “month” shall mean reference to a calendar month;
 - (vi) the recitals, schedules, annexures and appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (vii) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of State Government or GoI Agency hereunder or pursuant hereto in any manner whatsoever;
 - (viii) references to Recitals, Clauses, Sub-clauses, Schedules, Annexures or Appendices in this Agreement shall be deemed to be references to recitals, clauses, sub-clauses, schedules, annexures and appendices of this Agreement;
 - (ix) any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing and executed by duly authorized representative of such Party in this behalf and not otherwise; and
 - (x) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both days or dates.

2. Term

This Agreement shall come into force on and from the date hereof and shall continue to be in full force and effect till the later of: (i) the period for which the Shareholders Agreement is in force and effect in accordance with the terms thereof; or (ii) final determination and discharge by the State Government of all of its liabilities and claims hereunder against it.

3. Support of the State Government

3.1 In consideration of the Integrated Manufacturing Cluster Project being in the interest of the State and its economic growth and development, and GoI Agency and Authority entering into the Shareholders Agreement and agreeing to develop the Integrated Manufacturing Cluster, the State Government hereby agrees and undertakes to observe, comply with and perform the following, with reference to the Shareholders Agreement and the Integrated Manufacturing Cluster Project, either by itself or cause through Authority or any other Government Agency including relevant line departments:

- (i) [have duly notified by the Governor of the State, the Proposed Industrial Area falling within the Integrated Manufacturing Cluster as an industrial township under the Proviso to Article 243Q of the Constitution of India and other Applicable Laws, and to this end, carved out the area constituting the Integrated Manufacturing Cluster from the jurisdiction of any existing local body, municipal corporation, committee or council or Panchayat that may have jurisdiction on such area or any part thereof];
- (ii) enable continued access to the Site and Right of Way to the SPV for peaceful use of and operations at the Site by the SPV under and in accordance with the provisions of the Shareholders Agreement, without any let or hindrance from the State Government or persons claiming through or under it or any Government Agency, or any other persons;
- (iii) subject to the SPV complying with Applicable Laws, expeditiously procure and provide to the SPV or any person identified by it, Applicable Permits that may be required to undertake the development, implementation and operations of the Integrated Manufacturing Cluster, Trunk Infrastructure projects, Strategic Projects including provision of Urban Services;
- (iv) assist the SPV in procuring the Applicable Permits as GoI can grant, in accordance with and subject to the SPV complying with the Applicable Laws;
- (v) enable and facilitate, subject to and in accordance with the Applicable Laws, provision of all Applicable Permits required from any Government Agency for implementation and operation of the Integrated Manufacturing Cluster Project;
- (vi) upon a written request from the SPV, assist the SPV in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity, at rates and on terms no less favourable to the SPV than those generally available to the commercial customers/government authorities/agencies and public utilities receiving substantially equivalent services from any Government Agency and to ensure adequate infrastructure linkages and provision of Urban Services to the SPV;
- (vii) ensure that no impediments are put on the Integrated Manufacturing Cluster Project by the State Government or any Government Agency or any other person that interrupts development, implementation, operation and functioning of the Integrated Manufacturing cluster Project except on account

- of any emergency, law and order situation, calamities, disasters (natural, accidental or due to any act or omission of any person or accident or otherwise) or upon national security considerations. The State Government will strive towards expeditious development, implementation, operation and functioning of the Integrated Manufacturing Cluster Project;
- (viii) provide the SPV with police assistance for maintenance of law and order, removal of trespassers and security in the Integrated Manufacturing Cluster Project;
 - (ix) permit the SPV or any person identified by it, to undertake and provide the Urban Services, including electricity distribution, within the Integrated Manufacturing Cluster;
 - (x) support, cooperate with and facilitate GoI Agency and the SPV in the implementation of the Integrated Manufacturing Cluster Project;
 - (xi) ensure and procure, subject to and in accordance with the Applicable Laws, that all relevant municipal and other local authorities and bodies including Panchayats in the State do not levy or impose any Local Taxes on the Integrated Manufacturing Cluster or on the traffic and or goods moving in the Integrated Manufacturing Cluster Project without prior express written consent of the State Government and after prior consultation with GoI Agency, Authority and the SPV;
 - (xii) ensure total support, cooperate with and facilitate GoI Agency, Authority and the SPV in the implementation and operation of the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects in accordance with the provisions of the Shareholders Agreement, including the following:
 - (a) Facilitate speedy land procurement by SPV/GoB/Authority, as and when required for the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects;
 - (b) Assist in mobilization of requisite financial and other resources to the SPV or Authority other than in the form of Government grant or Government guarantee, as and when required for the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects;
 - (c) Ensure seamless coordination of the SPV and Authority with line departments of GoB and Government Agencies for project facilitation and development;
 - (d) Empower the SPV with adequate functional autonomy and freedom to develop and implement the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects; and
 - (e) Coordinate with the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry/GoI on relevant issues from time to time.
 - (xiii) approve, or cause to be speedily approved by the competent authority, as may be and to the extent required under Applicable Law, the Master Plan and Development Plan and any other plans that may be recommended by the SPV;
 - (xiv) not do or omit to do any act, deed or thing which may in any manner violate or cause the SPV to violate any of the provisions of the Shareholders Agreement and do or cause to be done all acts, deeds or things necessary for the implementation of the provisions of this Agreement and the Shareholders Agreement;

- (xv) procure that, the respective entities owning the existing roads, Right of Way or utilities on, under or above the Site are assigned to the SPV, by initiating and undertaking administrative/legal proceedings, such that the SPV is enabled to keep such utilities in continuous satisfactory use, and procure that the appropriate Government Agency, upon written request from the SPV, initiate and undertake legal proceedings for acquisition of any Right of Way necessary for the same;
- (xvi) undertake, shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects; and
- (xvii) observe and comply with all of its obligations set forth in this Agreement.

3.2

Other Benefits

Without limiting the generality of the provisions of Clause 3.1 above, the State Government undertakes to provide the following additional benefits to the SPV for the Integrated Manufacturing Cluster Project:

(i) Fiscal Benefits

- (a) The State Government shall, by an appropriate notification under provisions of Section 9 of the Indian Stamp Act, 1899, Section 78 of the Indian Registration Act, 1908 and other enabling provisions as applicable in the State, exempt the applicability of stamp duty and registration fee on the transfer to, or acquisition/procurement by, the SPV of the land consisting the Site, whether such transfer is effected in whole or in part by Authority or any other agency, or where the land is acquired in whole or in part by the SPV.
- (b) The exemption from payment of stamp duty and registration fee specified in Sub-clause (a) above shall also extend to first transfer/lease of parcels of land that may be made by the SPV to users, developers, contractors, construction companies, joint ventures or any other person as may be determined by the SPV, in the course of execution of the Master Plan.
- (c) The State Government shall, through the issue of appropriate notifications under the relevant legislations, exempt all the developments that will be undertaken within the Integrated Manufacturing Cluster in the course of execution of the Master Plan, from the application of Local Taxes.
- (d) The State Government shall extend to the Integrated Manufacturing Cluster, all fiscal benefits available to industrial establishments/developments under and in accordance with industrial and other policies of the State Government, as declared from time to time.

(ii) Electricity Distribution and Generation

- (a) [The State Government shall support and recommend, by itself and through Government Agencies, including the State Government owned distribution licensee viz. [●] or its successor, or any other agency having distribution license granted by the Electricity Regulatory Commission, any application by the SPV or any person authorized by it, before the Bihar Electricity Regulatory Commission, under the provisions of the Electricity Act, 2003, for obtaining a

license for distribution of electricity within the Integrated Manufacturing Cluster and such support shall include carving out and relinquishing the area constituting the Integrating Manufacturing Cluster from the distribution licensed area of [●insert name of the State Electricity Board], the applicable state-owned electricity supply/distribution company or its successor. The State Government and the relevant state-owned electricity supply/distribution company or its successors shall recommend the issuance of a distribution license to the SPV or any person identified by it].

- (b) The State Government shall procure and facilitate the supply of bulk electricity to the distribution licensee specified in Sub-clause (a) above, to enable it to undertake electricity distribution for the users within the Integrated Manufacturing Cluster.
 - (c) The State Government shall grant all Applicable Permits and procure land and water to enable the SPV or any person identified by it, for setting up a power generation plant and shall, in this regard, also make appropriate recommendations for obtaining coal linkage.
 - (d) The State Government shall ensure that the state transmission utility (as defined under the Electricity Act, 2003) shall provide adequate transmission facilities for supply of bulk power to the Integrated Manufacturing Cluster, including from the power generation plant that may be set up under Sub-clause (c) above.
- (iii) Reservation of water
The State Government shall provide for reservation of water from available resources in accordance with the prevalent State policy on water for the SPV to carry out its intended functions. State Government would levy charges for making such reservation and for using water, in accordance with prevalent State Policy.
- (iv) Notification of SPV as a Planning Authority
- (a) The State Government shall take all necessary steps to ensure that the SPV is notified, designated and empowered with all the rights, powers and functions of an [*please insert (name of the area)* Industrial Area Development Authority] under the provisions of the BIADA Act and/or other Applicable Laws (“**Planning Authority**”), including *inter alia*, the right to acquire, hold and manage movable and immovable property as it may deem necessary, and to undertake and carry out planning and development functions in relation to the Integrated Manufacturing Cluster.
 - (b) GoB/Authority agrees to delegate on an exclusive basis to the SPV all the functions to be carried out by Planning Authority under the provisions of the BIADA Act and other Applicable Laws, in its capacity as the Planning Authority in respect of the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects. Where, for any reason whatsoever, GoB/ Authority is unable, due to application of any law or otherwise for reasons acceptable to GoI Agency and the SPV, to delegate all or some of its functions of the Planning Authority under the aforementioned legislation, then GoB agrees to duly appoint and/or nominate the SPV on an exclusive basis to undertake all the functions and shall thereafter accept all the recommendations of the SPV in relation to the functions carried out by it and shall, where necessary, take such

steps as may be required under the provisions of the aforesaid legislations, in its capacity as the Industrial Township Authority under the provisions of BIADA Act and other Applicable Laws, to ratify and/or approve such recommendations from the SPV. Without limiting the generality of the above, GoB/Planning Authority shall accept and adopt the Master Plan in relation to the Integrated Manufacturing Cluster and take all such actions as may be required to make such Master Plan valid and effective for purposes of the BIADA Act.

- 3.3 The Parties recognise and acknowledge that NICDC has expended significant effort in planning and developing the diverse projects under the AKIC Project, including for the Integrated Manufacturing Cluster, Trunk Infrastructure and Strategic Projects, and such planning and development includes preparation of the perspective plans, master plans and detailed progress reports. The Parties also recognise and acknowledge that the NICDC has acquired special technical and commercial expertise and experience in developing integrated manufacturing cluster such as the Integrated Manufacturing Cluster. In accordance with the approval granted by GoI/Union Cabinet, the Parties recognise and acknowledge that NICDC (either directly or through a project management company) will act as the project development agency, knowledge partner and transaction advisor to the SPV for the Integrated Manufacturing Cluster Project, Trunk Infrastructure and Strategic Projects and the development and management of the Master Plan, including any changes thereto, shall be within the exclusive domain of the NICDC. With regard to the above:
- (i) NICDC will extend all kind of support and assistance to the SPV to get all plans, techno-economic studies, engineering designs prepared, obtain requisite approvals, tie up finances, viability gap funding, structure projects on public private partnership (PPP) and engineering procurement and construction (EPC) basis, tender out projects and get them executed and supervise them on behalf of the SPV;
 - (ii) NICDC will help in capacity building of the SPV and associated State institutions;
 - (iii) The Parties agree that the above shall be executed through a transparent competitive bidding process which will be conducted independently by NICDC on behalf of the SPV;
 - (iv) The Parties further agree that NICDC will be entitled to success fees from successful project developers or the SPV, as the case may be, on successfully bidding out projects; and
 - (v) All revenues accruing from the Facilities Development shall be appropriated by the SPV in accordance with the provisions of this Agreement and Applicable Laws. Further, the Parties agree that all profits generated by the SPV shall be solely applied towards development of the Integrated Manufacturing Cluster in the State. However, in the event the profit generated by the SPV are surplus and not required for the Integrated Manufacturing Cluster, the same may be, considered for distribution by way of dividend or otherwise, as per the Companies Act
- 3.4 The State Government also recognizes and acknowledges that development of the Integrated Manufacturing Cluster will be undertaken with private sector and private capital participation as far as practicable, and accordingly, it will be imperative to create an enabling framework to facilitate the development, financing and investment by the private sector. The State Government hereby agrees and covenants not to undertake any development, construction and/or operation engage in any

Competing Projects for a period of [20years from the date hereof], within a radius of [10 kilometres], either itself or through any other person authorized by it, of infrastructure and other projects which could be in direct competition with the PPP projects at the Integrated Manufacturing Cluster and Strategic Projects, that may be defined in specific detail in the tender documents for specific projects at the time of bidding out such projects. Provided however that, the aforesaid restriction shall not apply to the projects, as specified in **Schedule-E** of Shareholders Agreement, being the existing and ongoing industrial clusters / parks / projects of Authority and GoB, and for which land allotments have already been made to any specific industry.

- 3.5 Upon declaration of said area as industrial township under Article 243Q of the Constitution of India, State Government agrees and undertakes that it shall not levy, nor shall it permit or authorize any Panchayat or Municipality to levy, any property taxes on or for the Site or Integrated Manufacturing Cluster Project, any additional toll, fee, charge, Local Taxes or other tax applicable on the use of whole or any part thereof.
- 3.6 The State Government acknowledges and agrees that each of the SPV and GoI Agency shall have the right to seek specific performance of this Agreement.

3.7 **Reserved Activities**

- (i) The State Government shall, throughout the term of this Agreement provide, or cause to be provided, at the Integrated Manufacturing Cluster, certain activities (the “**Reserved Activities**”). Currently, the Reserved Activities are:
- (a) law and order and policing within the Integrated Manufacturing Cluster;
 - (b) health services, especially for the lower income citizens;
 - (c) registration of birth and death within the Integrated Manufacturing Cluster; and
 - (d) any other statutory functions that may not be amenable to be delegated to the SPV due to application of any law or otherwise for reasons acceptable to GoI Agency and the SPV and can be undertaken only by the State Government;

Provided however, the Parties may agree that the SPV by itself or through persons identified by it, undertakes and provides any or all of the Reserved Activities, in whole or in part, on such terms and conditions (including consideration for rendering of such services) as may be reasonably acceptable to the Parties.

- (ii) In order to allow the State Government to provide, or procure the provision of, the Reserved Activities, the SPV shall, at a cost to be mutually agreed, provide to the State Government, or its designated nominees/representatives with such access as reasonable so as to enable the State Government, or its designated nominees/representatives to provide the Reserved Activities in the Integrated Manufacturing Cluster. The SPV shall further provide to the State Government, or its designated nominees/representatives, with such space requirements as reasonable so as to enable the State Government, or its designated nominees/representatives to provide the Reserved Activities at the Integrated Manufacturing Cluster, upon terms and conditions, including as to cost, as may be mutually agreed between the Parties.
- (iii) The SPV shall, at all times, co-operate fully with the officers of the State Government, and its designated nominee(s)/representative(s), providing Reserved Activities at the Integrated Manufacturing Cluster.
- (iv) Memoranda of Understanding with Government Agencies:
The State Government hereby undertakes to use best endeavours to procure

the execution of memorandum of understanding between the SPV and each Government Agency providing the Reserved Activities, setting out the terms and conditions on which the Reserved Activities shall be provided by the relevant Government Agency.

3.8 **Joint Co-ordination Committee**

In order to ensure smooth and efficient rendering of the Reserved Activities, the Parties hereby undertake and agree to set up a joint co-ordination committee (the “**Joint Co-ordination Committee**”) consisting of a representative nominated by each of the State Government and SPV. The Joint Co-ordination Committee shall, unless otherwise agreed by the Parties to hold the meeting at a later date, meet at least once in every 3 (three) calendar months.

4. **SPV's Obligations**

Authority, GoBand GoI Agency hereby agree and undertake that the SPV shall perform, observe and comply with the following:

- (i) all Applicable Laws and Applicable Permits;
- (ii) provisions of the Shareholders Agreement; and
- (iii) its obligations under this Agreement.

5. **Representations and Warranties**

Each Party hereby represents and warrants to the other Parties hereto as follows:

- (i) It has power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) It has taken all necessary governmental, corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iii) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- (iv) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (v) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the charter documents or any Applicable Laws or Applicable Permits or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (vi) There are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default on its part under this Agreement or which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement.

6. **Sovereign Immunity**

6.1 The State Government hereby unconditionally and irrevocably:

- (i) agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts, except for the Reserved Activities set out under Clause 3.7 above;
- (ii) agrees that should any proceedings be brought or any execution, attachment or any other legal process is made against it or its assets, property or revenues in any jurisdiction in relation to or arising out of this Agreement or any

transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of the State Government or with respect to any of its assets, property or revenues;

- (iii) waives any right of immunity, which it or its assets property or revenues now has or may acquire in the future or which may be attributed to it in any jurisdiction; and
 - (iv) consents generally to the enforcement of any judgment or award against it in any such proceedings including to the giving of any relief or the issue of any process in any jurisdiction in connection with any such proceedings including the making, enforcement or execution against it or any of its assets, properties or revenues, of any order, judgment or decree that may be made or given in connection therewith.
- 6.2 Notwithstanding anything to the contrary herein contained, such waiver of right of immunity shall not apply to:
- (i) property and assets of any consular or diplomatic mission or consulate; or
 - (ii) property belonging to the defence services and such assets of the Union of India.

7. Breach

In case the State Government, any Government Agency, Authority or the SPV is in material breach of any of its obligations under this Agreement, and such breach is not cured within 60 (sixty) days of receipt of a notice in writing from GoI Agency, GoI Agency reserves the right to review and suspend the release of further financial assistance from GoI Agency till the breach is rectified to the satisfaction of GoI Agency.

8. Governing Law and Dispute Settlement

- 8.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of India. The provisions contained in Clauses 8 and 9 shall survive the termination of this Agreement.
- 8.2 In the event any dispute, difference or controversy of whatever nature, arises between the Parties out of or in connection with, or in relation to this Agreement, including the validity thereof, the Parties hereto shall endeavour to settle such dispute amicably in the first instance. The attempt to bring about an amicable settlement shall be treated as having failed as soon as one of the Parties hereto, after reasonable attempts, which shall continue for not less than 90 (ninety) days, gives a notice to this effect, to the other Party in writing. In case of such failure, the dispute shall be referred to a sole arbitrator, who shall be mutually appointed by the Parties. The arbitration proceedings shall be governed by the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time, and the seat of arbitration shall be at [Patna], India. The language of arbitration shall be English. The arbitrators shall issue a reasoned award. The award made in any such arbitration shall be final and binding on the Parties.
- 8.3 The Parties agree that they shall continue to perform their respective obligations under this Agreement during such arbitration, unless the performance or otherwise of such obligation is itself the subject matter of arbitration.
- 8.4 Subject to the provisions relating to dispute settlement and arbitration set out under Clause 8.2 above, the courts at [Patna] shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

9. Miscellaneous**9.1 Alteration of Terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if the same is in writing and signed by the duly authorized representatives of the Parties.

9.2 Time or Indulgence Allowed

An indulgence by a Party to any of the other Party in respect of any obligation or matter hereunder including time for performance to such other Party or to remedy any breach hereof shall not be construed as a waiver of any of its rights hereunder by the Parties and any such indulgence may be on such terms and subject to such conditions as the Party giving it may specify and shall be without prejudice to the Parties then accrued respective rights under this Agreement except to the extent expressly varied in writing.

9.3 Severability of Terms

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal by any competent arbitration tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement, which shall continue in full force and effect.

9.4 Language

All notices, certificates, correspondence or other communications under or in connection with this Agreement shall be in English language only.

9.5 Notices

- (i) Any notice or communication hereunder shall be in writing, signed by the Party giving it and may be served by sending it by hand delivery, facsimile, e-mail, registered or speed post, or by reputed national courier service, addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

If to the **State Government**:

Attn: [●]

Address: [●]

Fax no.: [●]

Email: [●]

If to **GoI Agency**:

Attn: The Chief Executive Officer and Trustee,

Address: National Industrial Corridor Development and Implementation Trust

8th Floor, Tower-1, LIC Jeevan Bharti Building, 124 Connaught Place, New Delhi-110001

Fax no.: 011 23317889

Email: ceo@nicdc.com

If to Authority

Attn: Managing Director

Address: 1st floor, Udyog Bhawan, East Gandhi Maidan, Patna, Bihar-800004

Fax no.: [●]

Email: [●]

- (ii) All notices given in accordance with Sub-clause (i) above shall be deemed to have been served as follows:

(a) if delivered by hand, at the time of delivery, when proof of delivery has been obtained; or;

(b) if sent by registered or speed-post or by a nationally recognized

courier service, at the expiration of 10 (ten) days following posting;
or

(c) if communicated by facsimile or e-mail, on receipt of confirmation of successful transmission.

(iii) All notices communicated by facsimile or e-mail shall be followed by a copy thereof being sent by speed post to the addressee. A notice or other communication received on a day other than a business day, or after business hours in the place of receipt, shall be deemed to be given on the next following business day in such place.

9.6 Authorized Representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of its authorized representative by similar notice.

9.7 Original Document

This Agreement is made in one or more counterparts, each of which shall be deemed to be an original.

9.8 Conflict

In case of any conflict between this Agreement and the Shareholders Agreement, the provisions contained in the Shareholders Agreement shall be binding on Parties signing this Agreement.

9.9 This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.10 Termination of this Agreement shall not relieve any Party of any accrued rights, obligations and liabilities arising out of or caused by any act or omission of a Party till the effective date of such termination or arising out of such termination.

9.11 Authority and GoI Agency shall not assign their rights under this Agreement without the prior written consent of the other Party. This Agreement shall be binding on and shall inure to the benefit of successors-in interest and permitted assigns of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED BY

<p>For Government of Bihar</p> <p>Name: [●] Title: [●]</p>	<p>For National Industrial Corridor Development and Implementation Trust</p> <p>Name: _____ Title: Chief Executive Officer & Trustee</p>
<p>For Bihar Industrial Area Development Authority</p> <p>Name: [●] Title: [●]</p>	

In the presence of:

Witnesses:

1. _____ Name: Address:	2. _____ Name: Address:
3. _____ Name: Address:	

Schedule A

Site of the Integrated Manufacturing Cluster Project as per enclosed map

संदीप पौण्डरीक,
अपर मुख्य सचिव।

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।
बिहार गजट (असाधारण) 489-571+10-डी0टी0पी0
Website: <http://egazette.bih.nic.in>